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ABSTRACT

The introductory one semester course is for the layman interested in obtaining a broad overview of his legal rights and responsibilities. It is not intended to provide him with the training necessary to try his own case; rather, it is intended to give him a legal framework within which he can find guidelines for his actions in various common situations. The material is presented in outline form, but with no rigid structure; each statement, question, or subheading of the outline is explained. The material is divided into 15 sessions, each designed to last from one to two hours, dealing with the following topics: wills defined, wills and estate planning, family relations, accidents, local government, criminal law, courts, litigation, contracts, real estate, negotiable instruments, business organization, and employment laws. There is also a section explaining New York's new laws governing illegal possession or sale of drugs. Appendixes explain the State's no-fault insurance system and provide a brief annotated list of relevant films available from the New York State Bar Association. (Author/PR)

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LAW
EVERYONE SHOULD KNOW

ADULT COURSE OUTLINE / 1974 REVISION

The University of the State of New York
THE STATE EDUCATION DEPARTMENT
Bureau of Continuing Education Curriculum Development
Albany, New York 12234

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FOREWORD

Few other State Education Department publications can claim the longevity of *Law Everyone Should Know*. Amendments in old laws and the passing of new statutes, coupled with a sustained demand for an adult education course designed to familiarize laymen with the legal precepts by which they must govern their daily affairs, have warranted four revisions and several reprints of this publication since its initial release in the late 1950's.

Throughout the years, many individuals have contributed to the development of *Law Everyone Should Know*. Most recently, Donald P. Parson, Austin R. Sennett, and Daniel A. Goldstein, all of whom are affiliated with the New York State Bar Association, have reviewed the manuscript at various stages of its development, and have offered helpful suggestions. Thomas A. Callaghan of Cooper, Erving, and Savage in Albany, provided assistance in answering questions of a technical nature. Much of the material contained in Appendix 1, pertaining to no-fault insurance, was compiled by William Yaus of Levene, Gouldin, and Thompson. Paul Gouldin contributed the introduction for this section. R. Allan Sholtes of the Guilderland Central Schools revised those sessions which were in need of updating.

George K. Tregaskis, associate, Bureau of Continuing Education Curriculum Development, State Education Department, coordinated the total project and prepared the final manuscript for publication.

Impressive as the expertise is that lies behind the development of this curriculum, the success of the course will depend upon the competencies and enthusiasm of the instructor. Therefore, the director of continuing education should solicit the cooperation of a local, civic-minded attorney to teach the course. The New York State Bar Association is prepared to assist in identifying such individuals. In addition, directors may receive guidance in organizing classes in Law Everyone Should Know by directing a request to the Bureau of Business Education, State Education Department, Albany, New York, 12210.

HERBERT BOTHAMLEY, *Chief*
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GORDON E. VAN HOOFT, *Director*
Division of Curriculum Development

MESSAGE TO THE INSTRUCTOR

Law Everyone Should Know is an introductory course for the layman interested in obtaining a broad overview of his legal rights and responsibilities. It is not intended to provide him with the training necessary to try his own case; rather, it is intended to give him a legal framework within which he can find guidelines for his actions in various common situations.

In addition to a number of revisions, this edition of *Law Everyone Should Know* includes two important supplements. The first is an explanation of New York State's new laws governing the illegal possession or sale of drugs. It is included in Session 7 of Course one, Criminal law. The second supplement, which is included as Appendix 1, is an explanation of the State's no-fault act and related statutes.

The course is designed to be taught in one semester, consisting of approximately 15 sessions, each from 1 to 2 hours long. The order of topics is not sacred, and each instructor should feel free to modify the course to meet the particular needs of his students.

Every instructor is encouraged to arrange for one or more guest speakers such as local judges or surrogates, the mayor or city manager, or the district attorney. Furthermore, each instructor is encouraged to arrange a field trip such as a visit to the local correctional institution or a court in session. A listing of films available from the New York State Bar Association is provided on page 112. On page 111 may be found some basic suggestions for making this teaching experience both worthwhile and enjoyable.

HOBART H. CONOVER, *Chief*
Bureau of Business Education

ROBERT H. BIELEFELD, *Director*
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Course One

I. What Is a Will?

A. A will is a written document formally executed before one's death to provide for disposition of real and personal property after death.

B. A will is ambulatory; that is, it may be changed at any time during life. It can be changed to cover property acquired after the will has been executed. A codicil is an amendment to a will. Codicils:

1. May be used for minor changes
2. May be executed with the same statutory formalities as the will

C. Corrections or changes in a codicil or the will require the same formalities as executing the will itself.

D. Each state has its own laws regarding wills. There is no Federal law on wills.

II. Who Can Make a Will?

A. In New York State, any competent person 18 years or older may make a will disposing of real and personal property (EPTL 3-1.1).

1. Aliens have the right to make wills. A Swedish citizen, for instance, can execute a valid will in New York State.
2. Although anyone convicted of a felony is civilly dead, he may still make a will.

B. A man who makes a will is called the testator; a woman the testatrix. Anyone leaving a valid will dies testate. Intestate means to die without a will.

C. A person making a will must have testamentary capacity (EPTL 3-1.1). That is, he:

1. Knows he is making a will
2. Knows the nature and extent of his property
3. Knows the natural objects of this bounty and the relation of one to the other
4. Acts freely

III. What Can Be Accomplished With a Will?

A. Property can be given to specific persons.

B. Property can be sold to pay death costs without asking a court for authority.

C. Taxes can be anticipated and controlled.

D. Fiduciaries can be appointed.

IV. What Happens Without a Will?

A. Property passes by way of the descent and distribution rules in Estates, Powers and Trusts Law 4-1.1.*

*Interstate Distribution After September 1, 1967
(EPTL 4-1.1)

If Nearest Relatives Are:	Shares
Spouse and issue	To spouse: $2,000, plus one-half of balance if only one child and no issue of deceased child survive or if issue of only one deceased child survive(s); otherwise $2,000 plus one-third of balance. To issue: remainder
Spouse and parent(s)	To spouse: $25,000 plus one-half of balance. To parent(s): remainder
Spouse and no issue or parent(s)	All to spouse
Children or their issue	All
Parent(s)	All
Brother(s), sister(s), or their issue	All
Grandparent(s) or their issue	All
Great-grandparents or their issue	All (effective March 30, 1971)
Others	Nothing (all to State)

Note 1: Where the distributees are all in equal degree of relationship to the deceased, they take equally, otherwise they take per stirpes (by representation). Suppose the distributees are Robert, son of the deceased, plus Mary and Jean, daughters of the only other son of the deceased, who himself is now deceased. Robert would receive one-half, Mary one-quarter, and Jean the remaining quarter. But if Robert had also died, leaving a son, Joe, then Mary, Jean and Joe would each receive one-third.

Note 2: No representation is permitted among collaterals after brothers' and sisters' issue. Thus children of a predeceased first cousin will not share where first cousins survive.

1. Although children of half blood take equally with children of whole blood, stepchildren have no rights of inheritance from stepparents.
2. The inheritance and succession rights of natural and adopted children are the same. But an adopted child loses his right to inherit from and through his natural parents at the time of adoption so that he has no claim if the natural parent dies intestate.

B. The estate is managed by an administrator named by the Surrogate's Court in one's own county.

1. The administrator has limited authority.
2. Usually the administrator liquidates assets, pays debts, and distributes records.
3. The priority of appointment of an administrator, established by law, is as follows:

    a. Spouse
    b. Child
    c. Grandchild
    d. Parent
    e. Brother or sister
    f. Next of kin entitled to share in the estate
    g. Public administrator

V. Where Is a Will Executed?

A. Generally, law of domicile, the law of one's permanent or legal home, controls the disposition of personal property. It is best to have a will prepared and executed according to the law of one's home state.

B. Real property and personal property located in another state or foreign country might come under the law of the country or state where they are located. This is called law of situs. If assets are located outside New York State, they may have special problems.

C. If one dies outside of New York State, it is possible that the other state or foreign country will recognize the will if it is executed according to its laws. In most states, change of domicile does not invalidate a properly executed will. Estates, Powers and Trusts Law 3-5.1 covers this area.

Example: Suppose one lives in New York at the time of his death. His will was executed in 1952 while he was living in Kansas. But while he was temporarily in France, it was changed. The will is still acceptable in New York since it was executed according to the laws of France and Kansas.

VI. How Is a Will Executed in New York State? (EPTL 3-2.1)

A. Two witnesses are required; three are preferable.

B. A witness should not be anyone who will benefit under the will. It should be one who can be expected to survive the testator and will be easy to locate when the testator dies.

1. If a witness is a beneficiary and his testimony is needed to prove validity, he forfeits any benefit under the will (EPTL 3-3.2).
2. If a witness would have been entitled to a share of an estate had there been no will, he recieves such share — up to what the will provides. (EPTL 3-3.2)

C. The testator must sign the will. (EPTL 3-2.1). He may:

1. Sign his name personally
2. Make his mark
3. Ask someone to sign his name in his presence
4. Have someone guide his hand
5. Affix his fingerprint

D. There are other requirements for executing a will.

1. All witnesses and the testator should remain together while each sees the other sign the will.
2. Immediately before or after signing his will, the testator must announce to the witnesses that the document is his will. This fulfills the legal requirement of publication. The witnesses do not have to read the will.
3. Each witness must sign the will at the request of the testator.
4. Each witness should indicate his address.

VII. What Are Some Other Will Executions?

A. Wills made by members of the armed forces while in actual military service or by persons serving with or accompanying an armed force or by a mariner at sea are valid. (EPTL 3-2.2)

1. Nuncupative - An oral will made in the hearing of two persons and proved by testimony of these two persons is accepted
2. Holographic - A will entirely in the handwriting of the maker need not be attested to

B. The maker of a nuncupative or holographic will must have testamentary capacity. The holographic or nuncupative will of a member of the armed forces becomes invalid one year after his separation from service and in the case of a mariner at sea it becomes invalid 3 years from the time the will was made.

VIII. How Is a Will Revoked?

A. Writing a new will cancels the previous one. The will with the latest date is presumed to be the latest will.

B. Intentionally tearing, obliterating, or destroying the will revokes it.

IX. Where Should a Will Be Kept?

A. The following choices are possibilities:

1. In the office safe of an attorney
2. In the possession of a fiduciary
3. In a safe deposit box (A court order is required to open the box after one's death.)
4. In some other person's safe deposit box but this presents problems of owner-deputy relationship
5. In a Surrogate's Court of any county
6. In any other safe place

B. A copy should be retained and reviewed periodically.

X. How Will an Estate Be Administered If a Will Is Left?

A. After one's death, a will must be probated in the Surrogate's Court of that person's home county. Probate determines the validity of a will. Having witnesses testify is a guarantee that no forged or specious document will be accepted as one's will. If one of the witnesses is dead or unavailable, the court may dispense with his testimony and probate the will upon the testimony of the other witness(es). If all witnesses are dead or unavailable, the court may probate the will upon proof of the handwriting of the testator and at least one of the witnesses. When the Surrogate's Court probates the will, it has legal effect.

B. After a will is admitted to probate, the fiduciary must file an oath and designation and, if required by the will or the court, post a bond for the faithful performance of duty.

C. A fiduciary administers an estate according to the instructions in the will.

1. In general, a fiduciary will liquidate assets, pay death costs, and distribute the estate to the persons designated.
2. The will may grant specific administrative powers to a fiduciary. Unless the will provides otherwise, a fiduciary also is granted

certain statutory powers. (EPTL 11-1.1)

3. A fiduciary has the duty to follow testamentary directions; the testator's expressed intentions govern his actions. He will not need to apply to the court unless the directions are incomplete or unclear. He will then be forced to seek the court's advice in a construction proceeding. The court will tell him what to do by interpreting the testator's intentions.
4. A fiduciary must account to the beneficiaries and to the court for his actions. He will be held personally responsible for all his actions until he is finally discharged.

WILLS AND ESTATE PLANNING

Session 2

I. Planning a Will

A. The objectives of the will should be specified

1. Who are the persons to be benefited?
2. What will work best for complex estate problems? Inter vivos trusts, gifts during life, stock buyout agreements, stock redemptions agreements, or other estate planning tools can be used.

II. Nondispository Provisions of a Will

A. Publication clause

B. Appointment of fiduciary

C. Directions to fiduciary

1. Payment of debts and funeral expenses
2. Scope of powers

D. Appointment of guardians and trustees if appropriate

E. Designation of successors to all fiduciaries

F. Testimonium clause and attestation clause

III.. Assets Not Includable in a Will

A. Life insurance proceeds-These are usually payable to beneficiaries named in the policy rather than to the insured's estate. An insurance policy is a contract, and the proceeds will be paid according to its provisions. The beneficiaries of the policy cannot be changed except by the insurer. Usually a change of beneficiary can be made only on written notice to the company issuing the policy.

B. U.S. Savings Bonds held in the name of one person, payable on death to someone else

C. Joint property with right of survivorship: real property, a bank account, shares of stock

D. Totten Trusts

IV. The Right of Election

A. The right of election is given to the surviving spouse (EPTL 5-1.1). This law is intricate but these are its salient features:

1. Generally a surviving spouse has a right to take against the will of the dead spouse if the will is not at least as generous as the laws of intestacy are. The share is one-half the net estate except if decedent is survived by one or more children or descendents. Then the surviving spouse can take only one-third.
2. Where the elective share is over $10,000 and the dead spouse has left the surviving spouse a trust in excess of the elective share but less than $10,000 outright, the surviving spouse may take $10,000 outright—which is deducted from the amount of the trust. The provisions of the will remain otherwise in effect.
3. Where the elective share is less that $10,000 the surviving spouse may take a share outright, forfeiting all benefits under the will.
4. There is no right to elect if under the will the spouse is left $10,000 outright and the balance of the intestate share is left in trust with income for life.
5. In the case of a person dying after August 31, 1966, certain inter vivos dispositions are treated as "testamentary substitutes" for the purpose of the right of election given to a surviving spouse.
6. The right of election may be waived by a written instrument freely executed before or after marriage.

B. The right of election is lost by a spouse who abandons the other spouse, by a valid divorce obtained by either spouse, or by legal separation obtained by the deceased spouse.

V. Children Under the Will

A. Children may be disinherited even though you cannot disinherit your wife or husband.

Exception: If a child is born or adopted after a will is executed and no mention has been made about him in the will and no settlement has been made for his benefit, then the child may take his elective share against the will (EPTL 5-3.2). It is not necessary to make a specific provision for the child if there is proof that failure to do so was done purposely.

VI. Charitable Gifts in a Will

A. If one leaves issue or a parent or parents surviving, then he may leave only one-half of his net estate to charities (EPTL 5-3.3).

B. If there is a valid objection to a gift, any excess charitable bequests will be declared invalid and will pass as in intestacy or under other pertinent provisions of the will.

C. An issue or parent may not contest a charitable disposition as invalid unless he will receive a pecuniary benefit from a successful contest as a beneficiary under the will or as a distributee.

D. A charity must be legally entitled to take the gift. If it is not, the court will exercise the cy-pres doctrine and give the money to a qualified charity resembling the one originally chosen.

VII. Expenses Facing an Estate

A. Medical expenses of the last illness and funeral expenses

B. Debts of the decendent

C. Administrative expenses — Executors and administrators are entitled to commissions on both principal and income. These are the basic commissions for a fiduciary in New York State:

4%	on first	$ 25,000
3-1/2%	on next	$125,000
3%	on next	$150,000
2%	on balance over	$300,000

Commissions on a $25,000 estate are $1,000; on a $100,000 estate, $3,625. A single commission is split among all the fiduciaries unless the estate exceeds $100,000. Then each fiduciary receives a full commission. No more than three full commissions are allowed. Generally commissions are not allowed on specific legacies or on real estate passing directly to the devisee. Because of the different functions and duties involved, there may be additional commissions to a trustee if a trust is created or to a guardian if there are infants.

D. Liquidation shrinkage — This results when property must be sold to pay death costs. Some property is not worth much to an outsider. For example, a closely held business or unusual assets subject to rapid market fluctuation do not generate much buyer interest at high prices.

E. Death taxes — These may cause severe shrinkage.

1. Federal estate tax

a. The estate must be over $60,000 to be taxable.
b. With the marital deduction, an estate of $120,000 can be left without Federal estate tax.

2. New York estate tax

a. The State tax does not provide the $60,000 exemptions allowed under the Federal law, but it does provide other exemptions — primarily proceeds of life insurance policies.
b. The marital deduction is similar to or the same as that under Federal law.
c. Death taxes are apportioned among the various beneficiaries of a taxable estate (which may include life insurance proceeds and jointly held property), according to the benefits they receive, unless some other provision is stated in the will.

VIII. Types of Disposition Under a Will

A. Devise is a gift of real estate.

B. Bequests or legacies can be effected in the following ways:

1. By giving specific property such as jewelry or certain shares of stock
2. By making a general bequest which is payable out of the general assets of your estate
3. By making a demonstrative bequest (This is paid from a particular fund or property in the estate.)
4. By giving a conditional legacy — one having reasonable conditions qualifying the right to take. The conditions cannot be against public policy. You can prepare for a condition not being fulfilled by providing for a gift.
5. If the legatee dies before the testator, the legacy is called a lapsed legacy. In New York State such a legacy to issue or to a brother or sister passes to that legatee's surviving issue.

C. Class gifts can be given to children and other descendents.

1. Per stirpes means that the issue of deceased children or descendents take the share their parent would have taken.

   Example: Property has been left to A and B but B is dead and leaves two children, C and D. If the property passes per stirpes, A will take one-half and C and D will each take one-quarter.

2. Per capita means to each an equal share. In the above example, A, C, and D would each take one-third.
3. In New York State, unless otherwise provided in the will, a gift will be presumed to be per capita among a class of equal degree

of consanguinity. If in unequal degree of consanguinity, then it will be per stirpes (EPTL 2-1.2).

D. Trusts can provide an income.

1. If you wish someone to get the income from a fund or property during life — or for a shorter period — and another person to get the principal later, a trust can be created.

    a. A trust set up by a will is a testamentary trust.
    b. A trust under which title passes between living persons is a living or inter vivos trust.
    c. A trust requires a trustee. The trustee is a fiduciary who manages property left with him, collects the income therefrom, and pays over the income and the principal of the trust in accordance with the terms of the will or trust agreement.

2. There are limitations by law on trusts in New York State.

    a. A trust cannot last longer than the duration of the lives of persons who are in being at the creation of the trust, plus 21 years.
    b. Generally, the beneficiary of a trust cannot alienate his right to receive income from the trust property. Nor can creditors of the beneficiary reach the income. However, a beneficiary will be permitted to assign his right to income of a trust:

        (1) To the extent of the excess over $10,000 annually, to specified relatives (as remote as nephews and nieces) or
        (2) In any amount to or for the benefit of person(s) he is legally obligated to support (EPTL 7-1.5).

IX. Summary

A. A will is always revocable. It can be revoked by a new will or by destroying the present will with intent to revoke. When a new will is executed, all older wills should generally be destroyed.

1. If at the time of death several wills are found, the one of most recent date controls.
2. If the last will is denied probate, it is then possible to offer the next preceding will for probate.

B. Wills may be contested. A person entitled to take a portion of an estate in intestacy may contest the will. The grounds for contesting a will are:

1. Ignoring proper form and method of execution
2. Exceeding legal limit in gifts to charities

3. Attempting to disinherit a spouse
4. Not providing for a child born or adopted after execution of the will
5. Violating the rule against perpetuities in a trust
6. Being under 18 years of age
7. Exercising undue influence, fraud, or coercion
8. Having a mental incapacity (This would vitiate the whole will, while some of the other grounds listed might invalidate only part of the will.)

C. A will may be amended or altered in part by a codicil which must be executed with the same care and formalities as the original will. A will cannot be amended by deletions, changes, or interlineations made in the will itself by the testator alone. Witnesses are still needed. The whole will may be invalidated.

D. There are testamentary formalities. When a testamentary disposition is attempted without fulfilling these requirements, it will fail; for example, a label on a piece of jewelry or on a stock certificate reading, "Upon my death this is to go to Aunt Sophie," is invalid. Though the testator intended that Aunt Sophie should have the gift, he has not complied with formalities of the law. His gift must be expressed in a formal will properly executed.

E. After a will is made, it should be reviewed periodically because of:

1. Changes in the law relating to wills, trusts, and taxes
2. Changed conditions with respect to property, family, and desires. The following conditions warrant the review of a will:

    a. When one marries or has a child
    b. When one is divorced or separated (Provisions for a spouse are not revoked by a divorce.)
    c. When anyone named in the will dies
    d. When principal beneficiaries under the will marry and have children
    e. When one moves to another state
    f. When any important change occurs to one's property, one's family, or oneself

FAMILY RELATIONS

Session 3

References are to Domestic Relations Law (DRL), Social Services Law (SSL), General Obligations Law (GOL) and Family Court Act (FCA).

I. The Marriage Relationship

A. Marriage is a civil contract which can be terminated only by the courts (DRL § 10).

1. New York must give full faith and credit to marriages, separations, and divorces of other states, but New York Courts may question whether the other state had jurisdiction over the parties.
2. Although New York recognizes any marriage which is valid where it was contracted, there are exceptions when marriage is between certain parties:

    a. Ancestor and descendant (DRL § 5)
    b. Brother and sister, uncle and niece, or aunt and nephew of whole or half blood (DRL § 5)
    c. Anybody already married (DRL § 6)
    d. Husband or wife who has been finally sentenced to life imprisonment (DRL § 6). For exception see Civil Rights Law § 792.

3. If the man and woman come within the exceptions above, the marriage is void; that is, it does not exist.

B. The parties must be capable of entering into a valid marriage. (DRL § 7)

1. If either marriage partner is incurably incapable of sexual intercourse, the marriage is voidable. It may be annulled.
2. Both parties must be over the age of 18 years. A marriage between people under 18 is voidable at the discretion of the court if the parties want an annulment.
3. If after marriage either partner becomes incurably insane for 5 years or more, the marriage is voidable.

C. The parties must consent to the marriage.

1. Marriage is voidable if either party cannot understand the nature, effect, and consequence of marriage.
2. Marriage is voidable if one party enters into it as a result of force or duress practiced by the other party or with the other party's knowledge.
3. Marriage is voidable if consent was obtained by fraud, provided the fraud was such that it would have deceived an ordinarily prudent person and was material to obtaining the other party's consent. The fraud must be such as to go to the essence of the marriage contract (DRL § 7).

D. Certain formalities are required for a valid marriage.

1. Marriage license (DRL § 13).
2. Blood test for venereal disease. For persons not of Caucasian, Indian or Oriental race, test for sickle cell anemia (DRL § 132).
3. Written consent of one or both parents if either or both parties is under 21 and over 18 years and said parents must be personally present at the solemnization, if marriage performed by village or town justice (DRL § 11).

4. Solemnization by a clergyman, certain municipal officials, judge of a court of record, or certain other judges. (Only one witness is needed. Or there can be a written contract acknowledged by the parties and two witnesses before a judge of a court of record.) (DRL § 11)

E. There is an exception — the common law marriage (DRL § 11).

1. A common law marriage entered into in a state sanctioning such marriages is valid.
2. A common law marriage entered into in New York State before April 29, 1933 (except between January 1, 1902 and January 1, 1908) is valid. These are the essential elements:

    a. There needs to be agreement between the parties — a present consent to take each other as husband and wife (even though not followed by cohabitation).
    b. Proof of cohabitation of partners and their maintaining the image of husband and wife raises a presumption they agreed to marry.

3. A common law marriage, if valid when it was made, is still valid.

II. Right and Obligations of Husband and Wife

A. Support and maintenance.

1. Husband has a legal obligation to support his wife and cannot be relieved of that duty by contract (DRL § 32; SSL § 101; FCA § 412).
2. Wife may sue and recover from husband money she has had to pay for her own or a child's support. She is only entitled to recover the money if he objected before making the expenditures. She may recover only for necessaries. What constitutes "necessaries" depends on the mode of living of the partners.
3. The husband is not obliged to support a wife who abandons him or commits adultery and the same is established to the court's satisfaction.
4. A husband or wife may be compelled by the State to contribute to the support of the other who has become a public charge (SSL § 101,104).
5. If husband and wife are living together (apart also, if husband is not supporting the wife), third parties may recover from husband for necessaries purchased by the wife for herself or the household.
6. The husband's liability for necessaries is based on the theory that his wife is his agent. The husband is not liable, therefore, if purchases are made by the wife upon her own credit when the things purchased are beyond the husband's station in life or he has previously directed the seller not to extend credit on his account to his wife.

B. Rights to have each other's society

1. Each has the right to cohabit and have intercourse with the other. These right may be denied to one committing adultery or other misconduct, both of which are grounds for separation or divorce.
2. There is no longer a cause of action maintainable by either spouse for alienation of affections or criminal conversation.
3. The husband has a cause of action for the loss of services and society of the wife resulting from personal injury to the wife through the wrong of another.

C. Property rights (See General Obligations Law.)

1. Wife has the same rights and liabilities as the husband.
2. Wife is always liable for her own contracts, including those for necessaries.
3. Wife is entitled to keep her own earnings.
4. Husband is entitled to wife's services in the household.
5. Wife has no dower rights unless they accrued prior to September 1, 1930.
6. If either spouse dies without a valid will, the survivor is entitled to a share of the decedent's estate, the share depending on who else survives; i.e., children or collateral relatives.
7. A right of election exists as to a surviving spouse when the other spouse dies after September 1, 1930, with a will which does not leave a certain amount to the survivor.
8. The right of election is lost by a spouse who abandons the other spouse, by a valid divorce obtained by either spouse, or by legal separation obtained by the deceased spouse.
9. Either spouse may sue the other for injuries to his person or damages to his property, but for insurance purposes, the policy must specifically insure against injuries to a spouse.

D. Miscellaneous rights

1. The wife's domicile is established by the same facts and rules of law as for any other person for voting and office holding.
2. The wife may acquire a separate domicile if she lives separate from her husband due to:

   a. His misconduct
   b. Their judicial separation
   c. Mutual consent

3. The husband has the right to select the family home.
4. The husband is not liable for his wife's wrongful acts unless committed with his actual coercion or instigation.
5. Either spouse is a competent witness against the other; but if either objects, he or she cannot be compelled to disclose a confidential communication between them made during the marriage (CDLR § 4502).

III. Right and Obligations of Parents and Children

A. Parents

1. The father has to support his children until they are 21 or emancipated.
2. The father is not liable for necessaries bought by his infant child. But if he doesn't support his child, he is liable for the reasonable value of necessities supplied to a person who is caring for the infant.
3. If the father is dead, unable to support his child, or cannot be found in the State, the mother must support the child if she has sufficient financial ability.
4. Neither the father nor the mother is required by law to leave any of his or her estate to the children. Each or both may cut the children off by their wills.
5. The parents are joint guardians of their children and have natural and equal rights to their custody.
6. In the interests of a child's welfare, a court may deprive one or both of the parents of custody of the child (FCA Art. 3, § 651).

B. Children

1. A parent has the right of the services of a minor, unemancipated child (GOL § 3-107).
2. What an employer pays to a child cannot be claimed by the parent unless the parent gives written notice of a claim to the child's earnings within 30 days after employment starts.
3. The father — or the mother if she headed the household and paid the bills — has a cause of action for the loss of the infant child's services and necessary expenses against one who is liable for personal injuries sustained by the child.
4. Except for earnings, the child's property may not be used for the child's support.
5. A child may be emancipated if both parents and child consent and child is 18 or over. If the child is emancipated, the parents lose their right to services, earnings, and control.
6. Minor, unemancipated children are subject to Family Court action as "Persons in Need of Supervision."
7. The parent is not liable for the child's wrongs solely by reason of the parent-child relationship, but may be liable, up to $500 for willful, malicious, intentional acts of infants over 10 and less than 18 causing property damage (GOL § 3-112).

C. Laws regulating adoption (DRL § 109-118-6)

1. An adopted child and the foster parents have all the rights and obligations to one another as a natural child and parents.
2. The natural parents lose all their rights and liabilities to the adopted child, and the adopted child, at the time of adoption, loses his right to inherit from his natural parents.

3. An unmarried adult alone or a husband and wife together can adopt another person, whether adult or minor. Also, a spouse may adopt his spouse's child.
4. Consent to an adoption is required of:
    - a. The foster child (if over 14 years of age) unless the judge or surrogate in his discretion dispenses with consent.
    - b. The parents or surviving parent of a child born in wedlock, whether the individual is an adult or an infant.
    - c. The mother of a child born out of wedlock, whether the individual is an adult or an infant.
    - d. Any person or authorized agency having lawful custody of the foster child.
5. Under certain circumstances — for example, child abandoned, parents divorced for adultery, or insanity — consent of the parent or parents of a minor child may not be required; however, these are questions of fact for court determination (SSL 384).
6. An order of adoption may be set aside for fraud, newly discovered evidence, or other good cause.

D. Laws regarding illegitimate children (FCA § 512 et seq.)

1. A child born or begotten out of wedlock is illegitimate.
2. If the parents of a child begotten or born before marriage thereafter marry, the child is legitimatized.
3. A child born of a married woman is presumed legitimate ("Seven Seas Doctrine").
4. The court may order the father to support his illegitimate child and to pay certain other expenses, such as the mother's expenses during her pregnancy.
5. In most cases, a child of an annulled marriage does not lose his legitimacy.

IV. Terminating the Marriage Relationship

A. Divorce

1. The New York law has liberalized the grounds for divorce and has fixed new provisions relating to limitation on actions for divorce and separation. Since September 1, 1967, an action may be maintained by a husband or wife for a judgment divorcing the parties and dissolving the marriage on any of the following grounds:
    - a. The cruel and inhuman treatment of the plaintiff by the defendant such that the conduct of the defendant so endangers the physical or mental well-being of the plaintiff as renders it unsafe or improper for the plaintiff to cohabit with the defendant.

- b. The abandonment of the plaintiff by the defendant for a period of 1 or more years.
- c. The confinement of the defendant to prison for a period of 3 or more consecutive years after the marriage of plaintiff and defendant.
- d. The commission of an act of adultery, provided that adultery is defined as the commission of an act of sexual or deviate sexual intercourse, voluntarily performed by the defendant, with a person other than the plaintiff after the marriage of plaintiff and defendant.
- e. The husband and wife have lived apart pursuant to a decree of separation for a period of 1 year after the granting of such decree, and satisfactory proof has been submitted by the plaintiff that he or she has duly performed all the terms and conditions of such decree.
- f. The husband and wife have lived separate and apart pursuant to a written agreement of separation, subscribed and acknowledged by the parties thereto in the form required to entitle a deed to be recorded, for a period of 1 year after the execution of such agreement and satisfactory proof has been submitted by the plaintiff that he or she has duly performed all the terms and conditions of such agreement. (Such agreement shall be filed in the office of the clerk of the county wherein either party resides within 30 days after execution thereof.)
- g. Parties between the ages of 18 and 21 can enter into a binding separation agreement with the consent of the Supreme Court.

2. Divorces obtained in other states

   - a. There is no uniform United States divorce law. The laws of divorce vary widely from state to state and are complex.
   - b. Whether a divorce obtained outside of New York will be recognized by the New York courts depends on certain factors:

     - (1) Whether the spouse who obtained the divorce was domiciled in the other jurisdiction
     - (2) Whether the defendant appeared or otherwise conferred jurisdiction on the court
     - (3) Whether the defendant was domiciled in the other jurisdiction
     - (4) Whether the partner who claimed the invalidity of the out-of-state divorce is the one who obtained it

3. Divorce obtained in foreign countries

   - a. A mail order divorce is invlaid.
   - b. A bilateral divorce is subject to the basic rules enunciated in "b" above but is a matter of comity, not full faith and credit (Wood vs. Wood and Rosenstiel vs. Rosenstiel).

c. Decrees of the Dominican Republic and Haiti may be suspect.

B. Dissolution of marriage — "Enoch Arden divorce"

1. Petitioning spouse

   a. Proof that the other spouse has been absent for 5 successive years
   b. Statement of belief that the absent spouse is dead
   c. Statement setting forth particulars as to efforts made to discover evidence that the absent spouse is still living

2. After the dissolution becomes final, and assuming the court had jurisdiction, the reappearance of the absent spouse does not invalidate the dissolution.

C. Annulment of marriage

1. An action for an annulment may be brought if the marriage is either void or voidable.
2. Either party has a right to a jury trial as to questions of fact, except where the action is based on physical incapacity.
3. The facts must be proved even if the defendant has defaulted.
4. The testimony of either party alone is not sufficient proof. There must be corroboration.
5. The court may determine the legitimacy of children in the annulment decree.

V. Separations

A. A separation decree may be obtained by either partner in a court action on the following grounds:

1. Cruel and inhuman treatment
2. Conduct on the part of the defendant making it unsafe and improper for the plaintiff to live with the defendant
3. Abandonment
4. Adultery
5. Nonsupport — only the wife can use this cause of action

B. The misconduct of the plaintiff is a good defense.

C. The parties may separate by agreement without court action.

D. Whether the separation is by court decree or agreement, the partners are still married. The separation only modifies the marriage rights and obligations by providing, for example, that cohabitation is unnecessary or that neither has a right to the other's society.

FAMILY RELATIONS — Session 3

VI. Alimony

A. The court can grant alimony for wife and child support in actions for divorce, annulment, or separation. A court can also require the husband to pay for legal expenses whether the wife is plaintiff or defendant.

B. The court retains jurisdiction after the decree and may modify the provisions of the decree as to alimony.

C. The amount of alimony depends upon the circumstances of the marriage partners.

D. If the husband is in contempt of court for ignoring the court decree or for otherwise defaulting in his obligation to pay alimony, the court decree must be enforced through contempt proceedings, sequestration, or execution of judgment.

ACCIDENTS (See Appendix 1 - No-Fault Insurance) — Session 4

I. Negligence and Liability: General Rules

A. Legally, compensable accidents are occurrences causing personal injury or property damage because of negligence.

B. Accident insurance companies protect the individual policyholder from sudden, large losses by distributing financial losses among a great many policyholders who pay insurance premiums to cover these losses.

C. No matter how great the injury or damage, there can be no recovery in court unless certain proof is established.

1. Defendant's negligence

a. He did something wrong or failed to do something the law required him to do for the protection of the public or the individual (either active or passive negligence).

Caveat: Specific laws sometimes create their own rules. See Labor Law § 240, Vehicle and Traffic Law § 388, and Uniform Commercial Codes § 2-317.

b. Damage or injury must flow from acts of defendant.
c. There must be a causal relationship — proximate cause. There are presumptions created by different grades of law — statutes, ordinances, rules, and regulations.
d. An unexplained skid does not presume negligence. There must be some other factor to show neglect.

2. Plaintiff's contributory negligence
    a. Contributory negligence means that plaintiff is wholly or partially at fault. Plaintiff is required to exercise reasonable care and prudence for his own protection.
    b. Contributory negligence of plaintiff bars recovery, except in certain nuisance cases. There is no comparative negligence under New York law.

3. Plaintiff's claim
    a. The burden of proof is on the plaintiff.
    b. There must be a fair preponderance of evidence.
        (1) Circumstantial evidence
        (2) Credible evidence
    c. Most accident cases involve questions of fact and the facts are usually in dispute.
    d. Not quantity, but quality of witnesses is desirable.
        (1) Interested and disinterested witnesses
        (2) Eyewitnesses

II. Automobile Negligence: Owner, Driver, and Passenger

A. Negligence of owner

1. Like any other driver, the owner is responsible for his own negligent driving while behind the wheel.
2. The owner is also liable if his car is not mechanically sound.
3. Even if the owner is not driving his car, he can be held liable for an accident if he gave his permission or consent to someone else to use his car — either expressed or implied (Veh. & Traf. L. § 50). Suppose an owner leaves his car with a mechanic for repairs and the mechanic's assistant has an accident with the car. The owner can be sued (and so can the mechanic's assistant).

B. Negligence of driver

1. The driver is liable for his own acts under the general rules of negligence.
2. He must operate his car with reasonable prudence. Driver negligence may be established in the following cases:
    a. Rear-end collisions
    b. Runaway cars (improper parking)
    c. Loss of control due to sickness, fright, or distractions
    d. Ignoring restrictions on driving — glasses, physical handicap
    e. Speeding

3. The doctrine of last clear chance makes the driver liable for not averting an accident he was forewarned about.

C. Negligence of passenger

1. Since a passenger is not in control of the vehicle, there is ordinarily no question of negligence or contributory negligence. A passenger in a two-car collision may sue both drivers and need not choose at his own risk. Note: A husband and wife may sue each other, but they are not covered under their insurance policy because of the restriction of Insurance Law § 167 (3).
2. A passenger assumes a risk in these instances:

    a. Knows of a defect in the car—brakes, lights, tires
    b. Knows of the driver's intoxication or illness
    c. Condones the driver's excessive speed

3. A carrier for hire has a duty to furnish safe carriage. Thus a passenger has a prima facie claim against the carrier who has the burden of going forward.

D. Negligence of pedestrian

1. Crossing against lights
2. Jaywalking
3. Coming out from behind parked cars

III. The Scene of an Accident: What To Do

A. Attend to any seriously injured person who may be in imminent danger and make the person comfortable, but do not move a seriously injured person. The good samaritan law relieves doctors, nurses or rescue squad volunteers with emergency medical technician's qualifications from liability while moving an injured person. But all other people may be held liable.

B. Call police. If anyone is hurt ask for ambulance and professional aid. Autos involved should not be moved until police come. If the accident is serious, take photos of cars before moving them.

C. Immediately get the following information:

1. Name and address of driver and owner of other car(s), license number, make of car, and name of insurance company
2. The number identifying each policeman at the scene of accident, as shown on police badge on his cap or jacket
3. Time and place that accident occurred plus weather and road conditions
4. Name and addresses of any witnesses or the license numbers of cars nearby

IV. Motor Vehicle Accident Indemnification Corporation

A. The M.V.A.I.C. was designed to protect victims of accidents caused by the following:

1. Out-of-state uninsured motor vehicles
2. Hit and run motor vehicles
3. Uninsured motor vehicles registered in New York
4. Stolen motor vehicles
5. Motor vehicles operated without permission of the owner
6. Insured motor vehicles where the insurer disclaims liability or denies coverage
7. Unregistered motor vehicles

B. The M.V.A.I.C. Law has certain time limitations which must be met if a party is to be recompensed for his injury. (See Ins. L. § 600 et. seq.)

V. Reporting an Accident

A. The driver is required to notify the Motor Vehicle Bureau within 10 days when there is personal injury or when property damage is over $150.

1. The report form may be obtained from the commissioner of Motor Vehicles. The report becomes a public record and can be obtained by anyone for a small fee.
2. Hearings may be ordered by the Commissioner to determine responsibility if facts warrant suspension or revocation of driver's license.

B. The insurance company should be notified as soon as possible.

1. Companies require immediate written notice containing information listed in III.C. and a brief, concise description of how the accident happened.
2. Auto insurance coverage includes:

    a. Bodily injury liability — The company's maximum liability for injury to one person as the result of any one occurrence is limited to the amount stated in the policy. The limit of the company's liability for two or more injured persons as the result of any one occurrence is also stated in the policy.
    b. Property damage liability — The limit of the company's liability for damage to or destruction of property of one or more persons as the result of any one occurrence is stated in the policy.
    c. Collision — This covers damage to the insured's automobile from contact with another vehicle or object such as a building or livestock.

d. Comprehensive — This covers damage to the insured's automobile from causes other than collision. Falling objects, fire, theft, and broken glass are examples.

VI. Accidents on a Public Street

A. The owner of a street must maintain it in a reasonably safe condition. A municipality is subject to the same general rules of negligence as a private owner.

1. Duty of municipality to keep streets and roads repaired

a. Ordinance assessing owner of abutting property for cost of repair does not create liability.
b. Owners of property adjoining the street are liable only for an affirmative act in destroying, defacing, or obstructing the walk or roadway.

2. Special use may create liability for property owner: drains, curb cuts, driveways, cellar vaults, cellar doors, stoops, encroachments, overhangs.

B. The same general rules apply to snow and ice cases.

1. Time element is vitally important.
2. Responsibility, if any, is upon municipality.
3. Duty cannot be shifted to abutting owner by municipality.
4. "Cleaning" statutes do not create liability for property owner unless he creates the hazard.

C. Notice of any defective condition must have been made known to municipality. And the municipality must have had an opportunity to repair the defective condition. Otherwise the municipality cannot be held liable.

1. Actual notice

a. Prior statement to municipality
b. Inspection reports, police, fire, department of public works
c. Official communications of notices to repair or notices of violation on record
d. Prior accident reports or claims

2. Constructive notice

a. Passage of sufficient time to charge reasonable prudent person with knowledge
b. Use of walk or roadway by municipal employees — police on beat, sanitation employees, etc.
c. Prior accidents or claims

D. Notice of claim against a municipality must be made within a specific time.

1. General Municipal Law § 50

a. The written claim should include the following:

(1) Location
(2) Negligence claimed
(3) Description of accident
(4) Injuries
(5) Damages

b. A written claim is subject to regulations:

(1) Filed within 90 days
(2) Verified

2. Exculpatory statutes

a. Ordinances require prior written notice as prerequisite to claim if defect is on walk, road, bridge, etc. — unless act is committed by municipality itself.

b. Validity of such an ordinance is still questionable, although its use is becoming prevalent in New York State.

3. Contributory negligence

a. Right to assume free and unobstructed way

b. Duty to observe condition

c. Latent defects

d. Traps and snares

e. No "four-inch" rule; negligence is not a matter of inches, but a breach of a duty which wrongdoer owes to plaintiff.

f. Momentary distraction. (Inattention is not contributory negligence.)

VII. Accidents in Buildings

A. The owner is not insurer of patron's safety.

B. The owner has a duty of reasonable care only and there is a distinguishable duty owed to certain other people.

1. Invitee or guest

2. Licensee

3. Trespasser

C. Reasonable care is based on foresight, not hindsight.

1. The standard of care is determined by the times and the area.

2. The mere fact that an accident occurs on insured's premises does not create a cause of action.

D. The owner of a premises is not required to do certain things.

1. Entranceways

a. No duty to use rubber mats

b. No duty to use anti-slipping compounds

c. Reasonable time after cessation of storm allowed to remove snow, ice, or water

d. Terazzo floors not negligence per se even though they are slippery when wet

2. Floors

a. Wax — must show excessive amount or improper application

b. Dirt — must show accumulation and lapse of sufficient time to charge defendant with notice

c. Obstructions — must show whether obvious

d. Floor coverings — must show whether torn, worn, or raised

3. Stairways

a. Construction defects — building codes, building customs, handrails, risers

b. Coverings — nosings, stair pads

4. Lights

a. Specific statutes — multiple dwelling laws, etc.

b. Maintenance — common law vs. statute

VIII. Products Liability

A. Express warranties

B. Implied warranties

1. Merchantability means that the product has a warranty (UCC 2-314).

   a. Fits the ordinary purposes for which such goods are used

   b. Conforms to any promises or affirmations of fact made on the container or label

2. Liability is imposed upon the seller who is a merchant. Isolated sale of particular product does not make party a "merchant."

3. Agriculture and Markets Acts

   a. Do not prohibit adulteration of food, such as diluting milk with water

   b. Do not create a statutory cause of action

C. Negligence

1. Improper manufacture

   a. Use of deleterious substances

   b. Negligent methods

      (1) No safeguards
      (2) No inspection
      (3) Unsanitary conditions
      (4) Use of defective machinery
      (5) Improper storage of supplies
      (6) Use of irritating substances
      (7) Use of flammable materials

2. Improper handling

   a. Exposure to risk, contamination

   b. Improper storage

   c. Improper refrigeration or transportation

3. Inherently dangerous object which becomes inherently dangerous if improperly prepared — doctrine of Mac Pherson vs. Buick

D. Injuries

Causal relation — must prove cause and effect, that the specific contaminated food caused the illness or the defective merchandise caused the damage or injury.

LOCAL GOVERNMENT

Session 5

Local government in New York State is provided through counties, towns, cities, villages, and school, fire and other districts.

I. Counties

Geographically, the State is divided into 62 counties, five of which are wholly contained in, and substantially merged governmentally with, the City of New York.

Until recently the other 57 so-called "upstate" counties were governed by boards of supervisors consisting of the supervisors of each town and supervisors elected in cities. In 1965, the New York State Court of Appeals held that the "one-man, one-vote" decision of the U.S. Supreme Court applied to local governments. Since that time, most counties have reorganized their legislative bodies, either by adopting weighted voting in the existing board of supervisors or by establishing a new county legislature, the members of which are elected from districts. Reapportionment of local legislative bodies (including those of counties) is authorized by Chapter 834 of the Laws of 1969.

Counties in New York State are also authorized to adopt charters which may provide for reorganization of county government, for a county executive or manager and, under certain conditions, for transfer of functions from other municipalities. See page 33 for additional information. Twelve counties have established the position of executive or manager through adoption of a county charter. Two other counties have adopted charters without provision for an executive; however, a board of supervisors may grant to its chairman administrative responsibility to oversee the functioning of the various county agencies and offices.

Upstate counties provide many local services including highways and bridges, health, welfare, mental health, refuse disposal, parks, community colleges, libraries, airports, civil defense, courts, law enforcement, jails and (through improvement districts) water, refuse disposal, sewage disposal, and drainage.

The area of each upstate county is subdivided and each part thereof is included in either a town or a city. There are 931 towns and 62 cities in the State.

II. Towns

Towns are governed by town boards, each of which consists of the town supervisor and other elective members. While towns do not have executives or managers, the supervisor may be empowered by the town board to oversee the functioning of town officers and agencies.

Certain basic governmental services are provided by towns. These include highways and bridges, health and welfare services where not provided by the county, recreation, police administration of justice, zoning, planning, regulation of building construction, licensing of trades and occupations, and vital statistics registration.

In addition, special services are provided in designated areas in towns through establishment of fire districts and town improvement districts. These districts provide specific services, financed by taxes or benefit assessments levied against the affected areas. These services include fire protection, water, sewers and sewage disposal, drainage, parks, public parking, street lighting, refuse and garbage disposal, public docks, and beach erosion control. For additional information, see paragraphs on fire districts and special districts below.

III. Suburban Towns

The Suburban Town Law provides additional powers of self government and administration on an optional basis to towns throughout the State having a population of 25,000 or more and those having a population of at least 7,500 located not more than 15 miles from a city having a population of at least 100,000; provided, however, that the population of such town increased at least 65 percent between 1940 and 1960 or 40 percent between 1950 and 1960. The town boards of suburban towns have more powers than those of other towns; their supervisors have more responsibilities. Special improvements may be provided on the basis of special assessment areas or as townwide improvements without the necessity of establishing improvement districts.

Twenty-six towns adopted the Suburban Town Law during 1964 and 1965, the first 2 years in which the law was effective. Another 25 have become suburban towns as of January 1, 1973, for a total of 51.

IV. Cities

Cities are specially incorporated by the Legislature to provide governmental services to their people.

All cities have elective legislative bodies, but the pattern varies as to the type of executive or manager — strong mayor-council, weak mayor-council, commission, and council-manager forms are used with local variations.

A. Weak mayor-council. Few cities now have this form of government. Its chief characteristic is that virtually all power is lodged in the council, with the mayor very little more than a ceremonial figure. Not many cities find it possible to deal with contemporary problems through a form of committee, which is what the weak mayor-council system approximates.

B. Strong mayor-council. Under a strong mayor-council system, a council has legislative powers, but the mayor may veto proposed ordinances and local laws and is likely to have fairly extensive appointive powers. He may exercise strong influence through the budget and has authority to oversee the administration of city government. This is the most common form in New York.

C. Commission Form. Only a few New York cities retain the commission form. The voters choose commissioners who both compose a council and head departments of administration. The commission thus is both a legislative body and an executive "committee." Ordinarily, there is no "mayor," except as one of the commissioners may exercise certain ceremonial duties.

D. Council-manager. Nineteen of the State's 62 cities operate under the council-manager form. The council is the policy-making body, and hires a professional manager to run the city. The mayor usually is a ceremonial figure, and often is a member of the council chosen by it as its presiding officer. Rochester is the largest city with the council-manager system. Watervliet calls its manager a "General Manager," and Batavia has an "Administrator."

The costs of most city services are paid from general revenues. Only certain types of public improvements are assessed against properties in benefited areas.

Services provided by cities generally include streets and street lighting; courts; police and fire protection; water; sewers and sewage disposal; refuse and garbage disposal; markets; parks and recreation areas; hospitals; public parking; jails; planning and zoning; regulation of building construction; licensing of trades and occupations, inspection services and mental health, civil defense, airports, and libraries where not provided by the county.

V. Villages

Villages are incorporated by local action taken pursuant to general law. There are 556 villages, several of which continue to operate under special charters granted by the Legislature prior to 1875. Each is governed by an elective board of trustees, headed by a mayor. While town government does not extend into cities, the area which a village covers continues as a portion of the town. Most villages were created to provide services in town areas prior to the time when the establishment of town improvement districts was authorized. Villages provide services such as streets and street lighting; water; sewers and sewage disposal; police and fire protection; markets; parks and recreation areas; garbage and refuse disposal; courts; health where not provided by the county; planning and zoning; regulation of building construction; licensing of trades and occupations.

VI. School Districts

Just as the entire area of the State is divided into counties and just as counties are divided into towns and cities, so the entire area of the State is covered by school districts, the boundaries of which frequently do not coincide with town, city or village boundary lines.

School districts are governed by elective trustees or boards of education, except that in some cities the members of school boards are appointed.

As separate political subdivisions, school districts generally provide elementary and high school education. Except in the five largest cities (New York, Buffalo, Rochester, Syracuse, and Yonkers),they are fiscally independent of the cities, towns,or villages in the areas of which they function. There are about 759 operating school districts in the State.

VII. Fire Districts

The fire district in New York is in a sense a "special" kind of special district. Although fire districts are created under the Town Law as are most other types of service districts, they have the legal status of "district corporations," which most districts do not have. Because of this status, which derives from the fact that they may contract debt and require the municipalities within which they exist to levy taxes on their behalf, fire districts are treated as local governments within the scope of this brief review. There are 820 such districts in New York State.

It is easy to confuse fire districts with "fire alarm" and "fire protection" districts, and a word of distinction is in order. The latter two types of districts are administrative units of town government, and have no independent authority to contract debt or require the levy of taxes. Fire protection and fire alarm districts exist primarily to contract with a municipality or fire district for the services indicated.

Fire districts share one important characteristic with school districts: they are not confined within the boundaries of any one municipality. Fire districts may cross town and village lines and may even extend across county lines. They may not, however, exist within cities.

VIII. Special Districts

Special districts are administrative units, usually of a county or town, and are not considered true units of local government in New York State. They are established for the purpose of providing specific improvements or performing specific services without general governmental powers. Special districts are normally established to provide such services as water supply, sewage disposal, street lighting and the like. They enable municipalities to provide residents and property owners within a specific area with services and to levy taxes and assessments for capital improvements, maintenance and operation, on those who receive directly the benefits of such services, without imposing financial obligations upon taxpayers outside the area served. There are 5,947 special districts in the State.

There are a few remaining special districts which are administered by independent boards of commissioners, rather than by town officials. Since 1932, the creation of special districts with independent boards has been forbidden. Most of the few which remain are on Long Island.

County service districts are used increasingly in the State for water and sewer purposes and are worthy of special note here. Under the County Law, any combination of towns, villages, and cities within the same county may seek the formation of a county district to provide water, sewer, drainage and refuse disposal services. The county district offers a device by which a service area can be broadened beyond town boundaries.

IX. Public Authorities

Another device which is used in some areas of the State to provide services of a local government character is the public authority. These authorities are created by the Legislature for specific purposes, such as the provision of water, sewage service, housing, industrial development, parking facilities, airports, and the like, and are classified as public benefit corporations. The service area of a public authority may extend into more than one county. Most numerous public authorities now are housing authorities.

X. Home Rule

A Home Rule Amendment to the State Constitution and implementing legislation (Municipal Home Rule Law and Municipal Annexation Law) became effective January 1, 1964. In addition, a Statute of Local Governments became effective in 1965.

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The 1963 Home Rule Amendment to the Constitution contains a bill of rights for local governments, expands home rule and local law powers of all counties, cities, and villages of the first class and extends such powers to towns and to all other villages. The amendment provides for a Statute of Local Governments to be a repository of selected, significant powers of local governments which may be added to from time to time by statutory enactment. The Statute is a unique type of law in that powers it insures may be withdrawn or restricted only by enactment of a law in 2 succeeding calendar years.

The bill of rights in the Home Rule Amendment guarantees every local government the power to have an elective legislative body, the power to elect or appoint its own officers, the power to enter into cooperative arrangements with other governments and apportion the costs thereof, the power of eminent domain and excess condemnation, the power to make apportion costs of services on areas within the local government and in the case of counties outside the City of New York, the power to adopt charters locally. It also provides for a new uniform local procedure for handling annexations of territory from one local government to another.

Constitutional Home Rule has two aspects — (1) local legislative power and (2) freedom from special laws enacted by the Legislature, except where these are enacted on request of the county, city, town or village or on message of necessity from the Governor and except where the subject of such a special law is a "matter of State concern." The

Legislature, nevertheless, has power, without any home rule request or message from the Governor, to enact general laws affecting counties, cities, towns, or villages.

Under local legislative powers, upstate counties and cities, towns and villages may adopt local laws concerning matters of local concern falling within the purview of constitutional and statutory grants of power; cities and upstate counties have specific power to adopt local law charters for themselves, while villages may modify the application to them of many provisions of the Village Law. Where a local law is within the scope of the home rule grant, it has a legal status equivalent to a statute enacted by the Legislature.

XI. Municipal Cooperation

Laws have been enacted from time to time authorizing municipalities of the State of New York to perform their functions or render their services in cooperation with other municipalities. These laws, as a rule, related to specific functions or services and provide for "partnership" type of performance, as well as arrangements whereby one municipality may undertake to perform or render the service for another for an agreed payment.

At the general election in November 1959, the voters approved a State constitutional amendment which empowered the Legislature to authorize municipalities, school districts and other districts to provide and finance jointly any service which each can provide separately. Similar constitutional amendments had previously been adopted with respect only to water, sewers, and drainage.

Pursuant to these constitutional authorizations, extensive implementing legislation has been enacted. Article 5-G of the General Municipal Law, as added by Laws of 1960, Chapter 102, and as amended thereafter, authorizes two or more municipalities, improvement districts or fire districts to enter into contracts to perform their respective functions, powers or duties on an individual, cooperative, joint or contract basis, provided the agreement is approved as to each participating municipality or district by a majority vote of the voting strength of its governing body. If the separate performance of the function, power or duty by a participant is subject to referendum, public hearing, or consent of another governmental agency, its power to participate in an agreement under Article 5-G is similarly conditioned.

The power granted by this law is additional to, and not in substitution for or in limitation of, any other legal authorization for the performance by the participants of their functions, powers or duties on a cooperative, joint, or contract basis.

XII. County Charters

The organization and administration of government in most counties of the State are prescribed generally by the County Law and various special laws enacted upon local request. In 1935, however, the State Constitution was amended to authorize the Legislature to enact "alternative" forms of county government with the power to transfer functions of local political subdivision to the county on referendum. Alternative forms of county government were provided by legislative enactment of special county charters for Nassau County (L. 1936, ch. 879), Westchester County (L. 1937, ch. 617), and Suffolk County (L. 1959, ch. 278).

At the November 1958 general election, the people approved an extensive amendment of the Constitution relating to county government. A significant provision in this amendment required the Legislature, on or before July 1, 1959, to confer by general law on all counties outside the City of New York power to prepare, adopt and amend their own charters, " subject to such limitations .... as the legislature may by general law from time to time impose." Pursuant to this constitutional directive, the County Charter Law was enacted (County Law, Art. 6-A, as added by Laws of 1959, ch. 569).

The constitutional provisions relating to powers of counties to provide alternative forms of government for themselves were continued in the new constitutional Home Rule Amendment which took effect January 1, 1964, and the County Charter Law was continued in the new Municipal Home Rule Law which also took effect on that date.

Under these constitutional and statutory authorizations, counties outside the City of New York have broad powers to draft and adopt their own charters by action of their legislative bodies subject to approval of the voters at a general election. To become effective, a county charter must be approved by the voters of the cities in [illegible] county considered as one unit and also by the voters outside the cities considered as one unit. A proposed transfer of powers from villages or a class of villages must be approved by the voters in the affected villages, considered as one unit. Thus far, 14 counties have adopted their own charters pursuant to this law and others are studying proposals for like adoption.

CRIMINAL LAW

Session 6

I. Crimes and Other Offenses

All conduct for which a penal sanction (either imprisonment or a fine) may be imposed is now defined as an "offense." Offenses fall into two broad categories: crimes and noncriminal offenses.

A. Crimes: acts or omissions which are of a more serious nature than noncriminal offenses. Depending on the length of the sentence of imprisonment that may be imposed for their commission, crimes are divided into two categories: felonies and misdemeanors.

1. Felony — an offense for which imprisonment for more than 1 year may be imposed.
    a. The gravest crimes are felonies.
    b. Felonies are divided into five categories, from class A to class E, depending upon the length of the sentence of imprisonment that may be imposed.
2. Misdemeanor — an offense (other than a traffic infraction) for which imprisonment for more than 15 days but not more than 1 year may be imposed.
    a. There are three categories of misdemeanors, class A, class B and unclassified.
    b. Just as in the case of a felony, conviction for a misdemeanor gives the perpetrator a criminal record.

B. Noncriminal or petty offenses

1. Violation — an offense (other than a traffic infraction) for which imprisonment of no more than 15 days may be imposed.
2. Traffic infraction — an offense entailing the violation of a law or other regulation regulating traffic other than acts declared to be felonies or misdemeanors.

II. Sanctions

A. Sentences of imprisonment

1. Felonies are generally punishable by indeterminate sentences of imprisonment, that is, periods of imprisonment that have both maximum terms for which they may last as well as minimum periods that must be served before parole can be granted.
    a. Class A felonies have life imprisonment as their maximum terms, with a minimum of 15 to 24 years.
    b. A life term may also be imposed upon a third felony conviction.
    c. The minimum period of an indeterminate prison sentence (other than for a class A felony) is one-third of its maximum term.
    d. In the case of class D and E felonies the court has discretion to impose a definite term of imprisonment of up to 1 year or it may impose an indeterminate term with a maximum of 7 years in a class D felony or of 4 years in a class E felony.
    e. Imprisonment for an indeterminate term causes forfeiture of any public office and suspension of the civil rights, authority or powers of or held by the person sentenced.
    f. A person imprisoned for life is deemed to be civilly dead—hence his spouse may remarry without a divorce.

2. Misdemeanors are punishable by definite sentences of imprisonment for not less than 15 days, nor more than 1 year in the case of class A misdemeanors or 3 months in the case of class B misdemeanors. In the case of unclassified misdemeanors, the term is as specified in the law or ordinance defining the crime.
3. Violations may be punished by definite sentences of no more than 15 days, and in some case (outside the Penal Law) no imprisonment but only a fine may be imposed.
4. Traffic infractions are punishable according to a separate scheme set forth in the Vehicle and Traffic Law. Both fine and imprisonment are provided for. In the case of ordinary traffic infractions other than speeding, a first offense is punishable by a maximum imprisonment of 15 days, a second offense by 45 days, and a third or subsequent offense by 90 days. Second and third offenses must take place within 18 months of the prior offense. In the case of speeding infractions, the maximum imprisonment terms are double those for ordinary infraction.
5. Place of imprisonment

    a. Persons sentenced to indeterminate terms of imprisonment are committed to the custody of the State Department of Correction. Unless sent to State reformatories because of their youth, they will be incarcerated in State prisons.
    b. Persons sentenced to definite terms of imprisonment (i.e., 1 year or less) are committed to county or regional institutions: county jails.
    c. Young adults (aged 16 - 21) may receive a sentence to a State reformatory, or in some cases (as is true in the City of New York) to a local reformatory. The maximum period of the sentence to a State reformatory is 4 years, and to a local reformatory, 3 years. Reformatory sentences may be imposed in the cases of both felony (other than class A) and serious misdemeanor convictions.
6. Intermittent sentence — a sentence of imprisonment to be served on days or parts of days as specified by the court. Permits the convict to serve on weekends, evenings, etc., and thus to keep his job or remain with his family.

    a. It may be imposed in case of a class D or class E felony, or any non-felonious offense, such as misdemeanors or traffic infractions.
    b. The sentence may be revoked because of the convict's misconduct, after a hearing.
    c. It may provide for a maximum of 15 days continuous confinement at its inception.
    d. It must specify exactly when convict is to be imprisoned.
    e. The term of the sentence may be for any term that could be imposed as a definite sentence, but must be calculated on the basis of its overall duration and not on the time spent in confinement.

B. Probation, conditional discharge, and unconditional discharge

1. Probation. The criminal offender remains in the community under the supervision of a probation officer during the period of probation, and in the custody of the court.

    a. Court must specify the conditions that the criminal offender must comply with during the period of probation, and during that period the court may modify or enlarge the condition.
    b. Periods of probation are set by statute, and run from 5 years in the case of a felony (probation not permitted for class A felonies) down to 1 year for a class B misdemeanor. Probation may be terminated earlier by the court, and it may be revoked and the offender imprisoned if the conditions of the probation are breached.

2. Conditional discharge. The offender is released and is not under the supervision of a probation officer, but is subject, during the term of the discharge, to the conditions imposed by the court, which can be modified.

    a. There no longer are "suspended sentences."
    b. As in the case of probation, conditional discharge is a sentence having a time period, and if the conditions of the conditional discharge are breached (as, for example, by commission of another offense) the sentence may be revoked and the offender imprisoned.
    c. It is not available in the case of class A or class B felonies, or felonies involving dangerous drug offenses.
    d. The period of the sentence is 3 years for a felony and 1 year for a misdemeanor or violation, but may be earlier terminated by the court.

3. Unconditional discharge. It can be imposed in any case where a conditional discharge could have been imposed. It is a final judgment of conviction, and hence gives rise to a criminal record, but having no term, cannot be revoked or modified.

C. Parole

1. Indeterminate term prisoners become eligible for parole; i.e., conditional release under supervision, which may be granted as a matter of discretion by the Parole Board after the minimum period of the prisoner's sentence has been served.
2. Prisoners serving definite sentences may also be conditionally released at the discretion of the Parole Board after serving a specified minimum period of imprisonment.

D. Fines

1. Misdemeanors and violations—fines whose maximum amounts are set forth by statute may be imposed on persons convicted. Such fines may be imposed in addition to whatever imprisonment is

specified for the particular offense, but the punishment may be by fine alone.

2. Felonies — a fine may only be imposed where the felon gained money or property through commission of the crime, and in such case, the fine may be fixed in an amount not to exceed double the amount of such gain.

    a. A similar fine may be imposed in the case of misdemeanors and violations.
    b. A fine may not be imposed with respect to a class A felony or as the sole sanction for a class B felony or a narcotics felony.

3. Fines may also be imposed in conjunction with sentences of conditional discharge or probation.

III. The Criminal Process

A criminal action is commenced by the filing of an accusatory instrument against a defendant is a criminal court. Thereafter the defendant must appear before the court at a hearing known as an arraignment at which the charges are made known to the defendant. The next step, if the charges are not dismissed, is for the defendant to enter a plea of guilty or not guilty, and in the latter case a trial follows which ends in a verdict that determines whether or not he is guilty.

A. Accusatory instruments

1. A criminal action is commenced in local criminal courts (district, city, town and village courts, the New York City criminal court, and a Supreme Court justice,or a county court judge sitting as a local criminal court) by the filing of a written, verified accusation by an individual charging the defendant with the commission of an offense. Depending on who makes it out, and the nature of the offense involved, the accusatory instrument may be an information, a simplified information, a prosecutor's information, a misdemeanor complaint, or a felony complaint.

2. A criminal action is commenced in the county court or the supreme court (collectively referred to as "Superior Courts" in the terminology of the Criminal Procedure Law) only upon an indictment, which is a written accusation by a grand jury charging the defendant with the commission of a felony.

    a. A felony can only be prosecuted on the basis of an indictment filed by a grand jury that has heard and examined evidence and concluded therefrom that the evidence-(1) spells out a legally sufficient or prima facie case and (2) there is reasonable cause to believe the defendant committed the offense charged.

b. On the other hand, the prosecution of a misdemeanor or petty offense in the lower criminal courts may proceed on the basis of an information (which must also establish a prima facie case).

c. Grand jury

(1) A grand jury is empanelled by (and is a part of) a superior court for the purpose of hearing and examining evidence concerning offenses and concerning misconduct, nonfeasance and neglect in public office.

(2) It consist of 16 to 23 members.

(3) At least 16 members must be present for its proceedings to be valid.

(4) The finding of an indictment or any other affirmative action requires concurrence of at least 12 members.

(5) The district attorney and the court are the advisors of the grand jury, and it may not receive advice from any other source.

(6) Witnesses before it must give the grand jury any evidence the grand jury requests. The witness who gives evidence receives immunity unless he either has waived immunity or the evidence is not responsive to the inquiry and is gratuitously given with knowledge that is not responsive.

(7) When the grand jury determines that the evidence before it establishes that a person committed an offense less than a felony, it will direct the district attorney to file a prosecutor's information with a local criminal court, so that the matter can be prosecuted.

(8) Where there is insufficient evidence to establish that a person committed an offense or there is no reasonable cause to believe the designated person committed the offense, the grand jury must dismiss the charge.

3. Accusatory instruments constitute the basis on which a criminal court may issue a summons or a warrant of arrest.

a. A local criminal court may issue a summons directing a defendant to appear before it at a specified time in response to the charge of a specific offense, on the basis of various kinds of informations or a misdemeanor complaint.

b. A local criminal court may issue a warrant of arrest to procure a defendant's appearance for arraignment upon an accusatory instrument other than a simplified information (used only in cases of traffic infractions or violations of Parks and Recreation Law and Navigation Law).

c. If the defendant has not previously been held by a local criminal court, a superior court must issue a warrant for his arrest upon the filing of an indictment charging him with a felony.

d. A defendant's appearance in court may also be required by an appearance ticket, which is issued and served by a police officer or other public servant under circumstances authorizing arrest for a misdemeanor or petty offense. A traffic ticket is an example.

B. Arrest — entails restraining a person or taking him into custody.

1. Arrest under a warrant of arrest

   a. The arrest is made by a police officer to whom the warrant is addressed or by another police officer to whom it was delegated.
   b. It may be executed on any day of the week at any hour of the day or night.
   c. Normally the officer must inform the defendant of the issuance of the warrant and of the offense charged.
   d. The officer may enter premises to effect an arrest if he reasonably believes the defendant to be present. He must give notice of his authority prior to such entry, unless he has reasonable cause to believe giving such notice will:

      (1) Result in defendant escaping or attempting to escape; or
      (2) Endanger the life or safety of the officer or another person; or
      (3) Result in the destruction, damaging, or secretion of material evidence.

2. Arrest without a warrant

   a. May be made by a police officer where he has reasonable cause to believe:

      (1) The person arrested committed an offense in his presence; or
      (2) The person arrested committed a crime, whether in his presence or otherwise.

   b. May be made by any person when

      (1) The person arrested has in fact committed a felony; or
      (2) The person arrested committed an offense in his presence.
      (3) When a private person makes an arrest he must normally advise the person arrested of the reason for the arrest, and must, without unnecessary delay, deliver or attempt to deliver the arrested person to an appropriate police officer.

3. Use of force to effect an arrest or prevent escape from custody. (In all cases where force or deadly force is used, the user must reasonably believe such use of force to be necessary.)

a. Peace officers (includes police officers)

  (1) May use physical force on a person the officer reasonably believes to have committed an offense
  (2) May use deadly physical force (i.e., force capable of causing death or serious physical injury) against a person who the officer reasonably believes (a) committed or attempted to commit (1) a felony involving the use or threatened use of physical force, or (2) kidnapping, arson, last degree escape, or first degree burglary, or (b) is attempting to escape and is armed with a firearm or deadly weapon.
  (3) But a peace officer may not justify reckless or criminally negligent conduct on his part, such as shooting an innocent bystander if he shoots into a crowd at a person escaping.

b. Private citizens

  (1) Unless he knows arrest is not authorized, may use physical force when directed to assist a peace officer, and may use deadly physical force when a peace officer so directs or authorizes unless he knows the peace officer is not himself authorized to use deadly physical force.
  (2) When acting on his own account, may use physical force on person who in fact committed an offense.
  (3) May use deadly physical force to arrest a person who has committed murder, first degree manslaughter, robbery, forcible rape, or forcible sodomy, and who is in immediate flight therefrom.

c. A peace officer and a private citizen alike may use deadly physical force to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

d. A person who possesses, controls or is privileged to be in a dwelling or occupied building (including a peace officer in the line of duty), who reasonably believes another is committing or attempting to commit a burglary thereof, may use deadly physical force on the perpetrator when he reasonably believes such to be necessary to prevent or terminate the burglary.

e. A person may use physical force other than deadly physical force in defense of himself or another, or in defense of premises, or in order to prevent larceny or criminal mischief to property.

4. "Stop and Frisk." When a police officer reasonably suspects a person is committing, has committed, or is about to commit a felony or class A misdemeanor in a public place, the officer may :

a. Stop the person and demand his name, address, and an explanation of his conduct; and

b. If the officer reasonably suspects he is in danger of physical injury he may frisk the person for a deadly weapon or any instrument or substance readily capable of causing serious physical injury.

c. Any weapon or other evidence found in a reasonable frisk (as opposed to a search that goes beyond what would be necessary to find a weapon) may properly be used as evidence.

C. Searches

Before a police officer can search premises, a vehicle or a person, except under special circumstances, he must obtain a search warrant.

1. A search warrant is issued by a local criminal court upon a written, verified application that there is reasonable cause to believe property that has been stolen, unlawfully possessed, or used or possessed to commit or conceal an offense, or that constitutes evidence as to commission of an offense, may be found in or on a designated place, vehicle, or person.
2. The search must be made between 6 a.m. and 9 p.m. of any day of the week unless the warrant authorizes search to be conducted at any time of the day or night.
3. In executing a search warrant, a police officer must normally give notice to the person searched or the occupant of the place or vehicle searched unless the warrant authorized entry without notice ("no-knock").
4. Physical force may be used by the police officer, but he may not use deadly physical force except to defend himself or a third person from what he reasonably believes to be deadly physical force.
5. Improperly seized evidence may not be admissible at a trial of a defendant.

D. Arraignment

Arraignment is the occasion on which a defendant against whom an accusatory instrument has been filed appears before the court which acquires control over him.

1. Fingerprinting. After arrest and usually before arraignment, defendants charged with felonies or many kinds of misdemeanors and some other offenses must be fingerprinted and may be photographed.
2. After arrest, a defendant must be brought before the court without unnecessary delay.
3. Upon arraignment the defendant appears personally before the court (except in certain less serious cases), and the court must:

a. Inform the defendant of the charge against him.

b. Advise him of his right to counsel (unless he has counsel). Defendant has the right:

(1) To an adjournment for the purpose of obtaining counsel

(2) To communicate, free of charge, by letter or telephone for the purpose of obtaining counsel and informing a friend or relative of his having been charged with an offense

(3) To have counsel assigned by the court if he is financially unable to obtain the same (but not for traffic infractions).

c. If defendant wants to proceed without counsel, court may either permit him to do so, or require that he have counsel (traffic infractions excepted). If the defendant proceeds without counsel he does not waive the right to counsel in future proceedings, and the court must so advise him.

d. Upon arraignment, the court, unless it is going to dismiss or make other final disposition immediately, must:

(1) Release the defendant in his own recognizance,

(2) Fix bail, or

(3) In the case of a felony, commit the defendant to the sheriff for his future appearance.

4. The court must order a narcotic addiction examination for any defendant charged with a dangerous drug offense or who, charged with any felony or misdemeanor, indicates he is or appears to be a narcotics addict.

5. After arraignment and before the defendant enters a plea, the indictment or other accusatory instrument may be dismissed if it is defective, if defendant was earlier prosecuted for the same offense (double jeopardy) or for many other reasons.

a. If the motion to dismiss is granted, the criminal proceeding ends.

b. Except in the case of a felony, the court may also grant an adjournment in contemplation of dismissal, under which the defendant is released in his own recognizance but the People may recommence the proceeding within 6 months.

c. Adjournment in contemplation of dismissal in marijuana misdeameamor cases — here the court may adjourn the case for up to 12 months and impose conditions on the defendant, including placing him under supervision of a public or private agency. An adjournment in contemplation of dismissal occurs before there is a conviction, and therefore there is no criminal conviction as in the case of a conditional or unconditional discharge.

E. Plea

Only two pleas are provided for, guilty and not guilty. If the defendant pleads not guilty, the action proceeds to trial.

F. Trial

At a trial the People must prove the defendant's guilt beyond a reasonable doubt.

1. Jury trial. Defendant has a right to trial by jury where he is charged with a felony or other crime punishable by imprisonment for more than 6 months. If the defendant waives the right to a jury, the case is tried before a single judge.

    a. A felony will be tried on an indictment in a superior court (county court or supreme court) before a jury of 12 persons.
    b. A misdemeanor will be tried before a jury of six persons in a local criminal court, except that in New York City a defendant is entitled to a jury trial only if punishment can be imprisonment for more than 6 months (i.e., a class A misdemeanor).
    c. The jury must unanimously agree on the verdict.

2. No unfavorable inference may be drawn from defendant's failure to testify in his own behalf.
3. The defendant has the right to be present at his own trial.

CRIMINAL LAW Session 7

I. Juvenile and Youthful Offenders

A. Juvenile delinquent

1. A person under 16 years of age is not criminally responsible for his conduct.
2. A person over 7 years of age and less than 16 years of age who does an act which, if done by an adult, would constitute a crime, is a juvenile delinquent. Proceedings to adjudicate a person as a juvenile delinquent are held in a Family Court, not in the criminal courts.

    a. The juvenile has the right to remain silent and the right to counsel, and the court must so advise him and his parent. Generally, the juvenile is entitled to due process.
    b. After a hearing, the court may either dismiss the matter or find the respondent to be a juvenile delinquent, in which case it may:

(1) Suspend judgment under specified conditions for no more than 1 year (which may be extended for an additional year)
(2) Place the juvenile in his own home or in the custody of a suitable relative, private person, authorized agency, or facility of the Division for Youth, for a period of 18 months, which may thereafter be extended from year to year
(3) Put the juvenile on probation for up to 2 years, which may be continued for an additional year
(4) Commit the juvenile to any suitable State institution

B. Youthful offender — a determination that may be substituted for a criminal conviction when the defendant is between 16 and 18 years of age. Youthful offender adjudication is not a criminal conviction and does not disqualify a person from holding public office or employment, or receiving any license granted by public authority.

1. Not available in the case of a class A felony or if the youth was previously convicted of a felony.
2. A youth who has no previous criminal conviction or youthful offender adjudication, must, if tried for a misdemeanor, be accorded youthful offender treatment if convicted, and receive a sentence of no more than 6 months imprisonment.
3. Any other eligible youth, if convicted, may receive a youthful offender sentence if the court so determines after a presentence investigation, or may be sentenced as an adult. A youthful offender who committed a felony could receive an indefinite sentence to a reformatory having a maximum limit of 3 or 4 years.

II. Defining Some Criminal Acts

A. Assault — Unlawfully causing physical injury to another either intentionally, recklessly, or through negligent handling of a deadly weapon or dangerous instrument, or in connection with committing another felony.

1. There are three degrees of assault — depending on the seriousness of the injury inflicted and the culpability of the perpetrator.
2. 1st degree - class C felony
   2nd degree - class D felony
   3rd degree - class A misdemeanor
3. Menancing — Intentionally placing or attempting to place another in fear of imminent serious physical injury (e.g., pointing an unloaded gun at someone) is a class B misdemeanor.
4. Reckless endangerment — Recklessly engaging in conduct that creates a substantial risk of serious physical injury (2nd degree — class A misdemeanor), or a grave risk of death to another while evincing a depraved indifference to human life (1st degree--class D felony).

B. Homicide — Causing death of a person or a more than 24-week-old fetus.

1. Criminally negligent homicide — causing death of another with criminal negligence--class E felony.
2. Manslaughter 2nd degree — recklessly causing death of another, or causing or aiding another to commit suicide--class C felony.
3. Manslaughter 1st degree — killing a person when intending to cause serious physical injury to him or another, intentionally killing a person while under the influence of extreme emotional disturbance, or killing the mother during an illegal abortion after her 24th week or pregnancy--class B felony.
4. Murder — there are no separate degrees of murder — intentionally killing a person, recklessly killing someone, or killing someone in the course of committing any of a number of specified felonies--class A felony.
5. Illegal abortion

C. Sex offenses — cover a broad range of possible activity involving either forcible compulsion or acts with a person who is under age, or incapable of consent by reason of being physically helpless or mentally incapacitated or defective.

1. There are numerous offenses ranging from sexual misconduct (which includes sexual intercourse with a female or deviate sexual intercourse with another without consent or sexual conduct with an animal or dead body), a class A misdemeanor, to first degree rape or sodomy, class B felonies, which entail forcible compulsion or a victim who is physically helpless or under 11 years old.
2. A female under the age of 17 cannot consent. For example, sex between a 16 year old boy and a 16-year-old girl is sexual misconduct on the boy's part; if the boy were 21 it would be 3rd degree rape, a class E felony.
3. Sexual abuse, which entails any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire, has three degrees and ranges from a class B misdemeanor to a class D felony depending on age, consent and compulsion.

D. Burglary and criminal trespass and trespass.

1. Trespass — Occurs when a person knowingly enters or remains unlawfully on any premises, and is a violation.
2. Criminal trespass — The same offense, if committed on premises that are fenced, or in a building, is 3rd degree criminal trespass, a class B misdemeanor. If the premises is a dwelling, the offense becomes 2nd degree and is a class A misdemeanor. If the trespasser in a building possesses or knows that another participant in the crime possesses an explosive, a deadly weapon or a firearm and ammunition for it, the crime is first degree criminal trespass, a class D felony.

3. Burglary — If in addition to a knowing and unlawful (i.e., without permission) entry, the premises constitute a building and the intruder enters or remains with the intent to commit a crime, the offense is burglary. There are three degrees of burglary, all of which are felonies. The higher degrees turn upon the facts that the building was a dwelling entered at night or that the burglar was armed or carrying explosives or caused physical injury to someone or threatened use of a dangerous instrument.

E. Criminal mischief — Intentional damaging of another's property when the perpetrator has no right to do so nor reason to believe he has such a right.

1. There are four degrees of the crime, ranging from a class A misdemeanor to a class B felony, depending on the extent of the damage, or if explosives are used.
2. Reckless (as opposed to intentional damage to property of another) is fourth degree criminal mischief if the amount of the damage exceeds $250.

F. Arson — Covers damaging a building by fire or explosion.

1. Fourth degree arson, the lowest degree of arson, results from reckless, as opposed to intentional, conduct and is a class E felony. If no one but the defendant had an interest in the building, there is no crime.
2. Third degree arson, a class C felony, varies from fourth degree arson in that the damage is intentionally caused. Again if no one else had an interest in the building, the intent to damage was for a lawful purpose and defendant had no reason to believe his conduct would endanger the safety of anyone else or damage another building, there is no crime.
3. Where the fire or explosion is intentional, and another person-not a participant in the crime-is present in the building and the defendent knows this or should know that it is a reasonable possibility, the crime is second degree arson and a class B felony, if fire is the damaging instrumentality, and 1st degree arson, a class A felony, if explosives are the damaging instrumentality.

G. Larceny — Intentional taking of the property of another.

1. Any stealing of property is petit larceny, a class A misdemeanor.
2. It becomes grand larceny

   a. 3rd degree (class E felony) when the:

      (1) Value of the stolen goods exceeds $250
      (2) Stolen property is a public record, or the like
      (3) Stolen property is secret scientific material
      (4) Stolen property is a credit card

(5) Stolen property, regardless of nature or value, is taken from the person of another or
(6) Stolen property regardless of value, is obtained by extortion.
(7) Stolen property consists of one or more firearms, rifles, or shotguns.

b. The crime becomes second degree (class D felony) if the value of the property exceeds $1,500.
c. Where property is stolen by means of extortion entailing fear of future (1) physical injury to anyone, (2) damage to property, or (3) abuse of public office to adversely affect someone, the crime becomes grand larceny first degree (a class C felony).

H. Robbery — Forcible stealing involving use or threatened use of physical force upon a person.

1. The basic crime described above is third degree robbery, a class D felony.
2. If the robber is aided by another person actually present, injures a nonparticipant or displays a firearm, the crime is aggravated to second degree, a class C felony.
3. If in the course of commission or flight, any participant in the crime (a) seriously injures a nonparticipant, (b) is armed with a deadly weapon, (c) uses or threatens immediate use of dangerous instrument, or (d) displays a loaded firearm, the crime becomes first degree robbery, a class B felony.

I. Unauthorized use of a vehicle — A class A misdemeanor which occurs when someone, without consent of the owner, takes, operates, exercises control over, rides in, or otherwise uses the vehicle. There is a presumption that anyone (including a rider) who does not have the owner's consent knows that he does not have it. (There are also other acts that constitute this crime.)

J. Dangerous drug offenses

In an effort to curb the unlawful sale and possession of drugs, the use of stolen prescription blanks to obtain drugs, and the defrauding of physicians to obtain prescriptions, New York State in September of 1973 instituted new and stricter drug laws than had ever been in effect previously in the State. Specifically, the new drug laws are Public Health Law: Article 33; Mental Hygiene Law: Article 81; and Penal Law: Article 220.

The following general changes were made in the laws:

- The schedule of felonies and penalties has been increased
- The penalties are more severe
- The quantities of drugs established for felony crimes are considerably smaller

- The penalties for second felony offenders are generally quite severe
- Plea bargaining has been limited

In addition, several new crimes related to conspiracy to commit an A felony (B felony), bribery with respect to an A felony (B felony), and unlawfully giving or receiving a reward (C felony) have been added.

Each crime and its penalty are determined by specific amounts for each drug, as indicated on the schedule of offenses and penalties under N.Y.S. Penal Law, Article 220 (pages 49-50). The schedule was produced by the New York State Drug Abuse Control Commission and deals with only those statutes or parts of statutes which apply primarily or exclusively to the unlawful traffic in controlled substances. It should be understood, of course, that the drug abuser is subject to the entire penal code to the same extent as any other person.

K. There are numerous other criminal offenses defined in the Penal Law. As there are no more "common law" crimes, to be criminal an activity must be particularly proscribed by law.

L. Attempt to commit crime — Intentionally engaging in conduct that tends to effect the intended crime. An attempt to commit a crime is usually punishable by a sentence one notch below that provided for the completed crime. Thus, an attempted class B felony is punishable as a class C felony, an attempted class E felony, as a class A misdemeanor, and so forth.

PENALTIES
FOR THE ILLEGAL POSSESSION OR SALE OF DRUGS IN NEW YORK STATE

	Unlawful Possession						
	A-I FELONY	**A-II FELONY**	**A-III FELONY**	**B FELONY**	**C FELONY**	**D FELONY**	**A MISDEMEANOR**
Narcotic Drugs	2 oz or more of a substance containing a narcotic drug.	1 oz to 2 oz of a substance containing a narcotic drug.	Any amount with intent to sell.	Second offender of C felony other than marijuana.	1/8 oz to 1 oz of a substance containing a narcotic drug.		Any amount.
Hallucinogens		625 mg or more.	Any amount with intent to sell if previous drug offense conviction; 25 mg with intent to sell; 125 mg.	Second offender of C felony other than marijuana.	25 mg to 125 mg.	Any amount with intent to sell.	Any amount.
Hallucinogenic Substances		25 g or more.	Any amount with intent to sell if previous drug offense conviction; 1 g with intent to sell; 5 g or more.	Second offender of C felony other than marijuana.	1 g to 5 g.	Any amount with intent to sell.	Any amount.
LSD		25 mg or more.	Any amount with intent to sell if previous drug offense conviction; 1 mg with intent to sell; 5 mg or more.	Second offender of C felony other than marijuana.	1 mg to 5 mg.	Any amount with intent to sell.	Any amount.
Methamphetamine		2 oz or more of a substance containing methamphetamine.	Any amount of a substance containing a narcotic drug with intent to sell if previous drug offense conviction; 1/8 oz or more of a substance containing methamphetamine with intent to sell.	Second offender of C felony other than marijuana.	1/2 oz to 2 oz of a substance containing methamphetamine.	Any amount with intent to sell.	Any amount.
Stimulants		10 g or more.	Any amount with intent to sell if previous drug offense conviction; 1 g with intent to sell; 5 g or more.	Second offender of C felony other than marijuana.	1 g to 5 g.	Any amount with intent to sell.	Any amount.
Dangerous Depressants				Second offender of C felony other than marijuana.	10 oz or more.	Any amount with intent to sell.	Any amount.
Depressants				Second offender of C felony other than marijuana.	2 lbs or more.	Any amount with intent to sell.	Any amount.
Narcotic Preparations				Second offender of C felony other than marijuana.	2 oz or more of a substance containing a narcotic preparation.	Any amount of a substance containing a narcotic preparation with intent to sell; 1/2 oz or more.	Any amount.
Marijuana					1 oz or more, or 100 cigarettes or more of a substance containing marijuana.	Any amount of a substance containing marijuana with intent to sell; 1/4 oz or more, or 25 cigarettes or more of a substance containing marijuana.	Any amount.
Any Other Controlled Substances						Any amount with intent to sell.	Any amount.
	A-I FELONY	**A-II FELONY**	**A-III FELONY**	**B FELONY**	**C FELONY**	**D FELONY**	**A MISDEMEANOR**
PENALTIES:	15 yrs.-life mandatory life sentence; if paroled, life parole.	6 yrs.-life mandatory life sentence; if paroled, life parole.	1 yr.-life, mandatory life sentence, if paroled, life parole.	1-25 yrs. mandatory imprisonment.	1-15 yrs. mandatory imprisonment except for marijuana.	1-7 yrs.	To 1 yr.
OTHER COMMENTS:	Plea bargaining within A-felony class only.	Plea bargaining within A-felony class only.	Plea bargaining within A-felony class only. Life probation available under certain circumstances.	Conspiracy to commit an A-felony, is a B-felony, bribery and bribe receiving in a drug case is a B-felony.	Probation available for first marijuana violation; rewarding and receiving a reward for official misconduct in a drug case can be a C-felony or E-felony.	Probation available.	Probation available.

Unlawful Sale							
	A-I FELONY	**A-II FELONY**	**A-III FELONY**	**B FELONY**	**C FELONY**	**D FELONY**	**A MISDEMEANOR**
Narcotic Drug	1 oz or more of a substance containing a narcotic drug.	1/8 oz to 1 oz of a substance containing a narcotic drug.	Any amount.				
Hallucinogens		125 mg or more.	25 mg or more, any amt. with previous drug offense conviction.		Any amount with previous D felony sale conviction.	Any amount.	
Hallucinogenic Substances		5 g or more.	1 g or more; any amt. with previous drug offense conviction		Any amount with previous D felony sale conviction.	Any amount.	
LSD		5 mg or more.	1 mg; any amt. with previous drug offense conviction.		Any amount with previous D felony sale conviction.	Any amount.	
Methamphetamine		1/2 oz or more of a substance containing methamphetamine.	1/8 oz or more of a substance containing methamphetamine; any amt. with previous drug offense conviction.		Any amount with previous D felony sale conviction.	Any amount.	
Stimulants		5 g or more.	1 g or more; any amt. with previous drug offense conviction.		Any amount with previous D felony sale conviction.	Any amount.	
Dangerous Depressants				Second offender of C felony sale of dangerous depressant or narcotic preparation.	10 oz or more. Any amt. with previous D felony sale conviction.	Any amount.	
Depressants					2 lbs or more. Any amt.with previous D felony sales conviction.	Any amount.	
Narcotic Preparations				Any amount to a person under 21; second offender of C felony sale of dangerous depressant or narcotic preparation.	Any amount.		
Marijuana					Any amount.		
Any Controlled Substances					Any amount with previous D felony sale conviction.	Any amount.	

	A-I FELONY	**A-II FELONY**	**A-III FELONY**	**B FELONY**	**C FELONY**	**D FELONY**	**A MISDEMEANOR**
PENALTIES:	15 yrs,-life mandatory life sentence; if paroled, life parole.	6 yrs.-life, mandatory life sentence; if paroled, life parole.	1 yr.-life, mandatory life sentence, if paroled, life parole.	1-25 yrs. mandatory imprisonment.	1-15 yrs. mandatory imprisonment except for marijuana.	1-7 yrs.	To 1 yr.
OTHER COMMENTS:	Plea bargaining within A-felony class only.	Plea bargaining within A-felony class only.	Plea bargaining within A-felony class only. Life probation available under certain circumstances.	Conspiracy to commit an A-felony, is a B-felony, bribery and bribe receiving in a drug case is a B-felony.	Probation available for first marijuana violation; rewarding and receiving a reward for official misconduct in a drug case can be a C-felony or E-felony.	Probation available.	Probation available.

OTHER CRIMINAL ACTS

Act	Penalty	Description
Criminal Injection of a Narcotic Drug (Class E Felony).	1-4 years	Intentionally injecting a narcotic drug into another's body with the latter's consent.
Criminal Possession of a Hypodermic Instrument (Class A Misd.).	To 1 year	Possession of a hypodermic needle or syringe.
Criminal Use of Drug Paraphernalia. First Offender (Class A Misd.).	To 1 year	Possession and sale of dilutants, adulterants or packaging materials for the unlawful mixing or distribution of narcotic drugs or stimulants.
Criminal Use of Drug Paraphernalia: Second Offender (Class D Felony).	1-7 years	Second conviction of paraphernalia crime.
Criminal Possession of a Precursor of a Controlled Substance (Class E Felony).	1-4 years	Possession of carbamide (urea), ergot, pentazocine, etc., with certain other chemicals.
Loitering 1st (Class B Misd.).	To 3 mos.	Being in any place for the purpose of unlawfully using or possessing a controlled substance.

DEFINITIONS

"**Sale**" includes the giving or the offering to give to another. "**Narcotic Drugs**" includes opiates, opium, cocaine, heroin, morphine, codeine and methadone. "**Hallucinogens**" includes psilocybin, dimethoxyamphetamine, peperidyl benzilates, psilocyn, tetrahydrocannibinols other than marijuana. "**Hallucinogenic Substances**" includes some amphetamines, ibogaine, bufotenine, DET, DMT, mescaline, peyote. "**Stimulants**" includes most amphetamines, methamphetamine, phenmetrazine, methylphenidate. "**Dangerous Depressants**" includes methaqualone, barbituric acid derivitives, barbitol, phenobarbitol. "**Depressants**" includes chloral betaine, chloral hydrate, meprobamate. "**Narcotic Preparations**" includes nalorphine or other opiate preparations. "**Marijuana**" includes hashish. "**Controlled Substances**" includes all of the above and any other drugs listed in Schedules I-V of Section 3306 of Public Health Law.

COURTS

Session 8

I. The Court System

Courts generally are divided into two groups. One has original jurisdiction: it conducts trials. The other has appellate jurisdiction: it hears appeals from decisions rendered in courts of original jurisdiction.

A. New York's courts of original jurisdiction

1. Supreme Court - This is the only court having unlimited original jurisdiction. It is empowered to try any kind of case involving any kind of question.
    - a. Civil and criminal cases (but criminal cases rarely tried in Supreme Court except in New York City, where all felony cases are tried in Supreme Court).
    - b. Ten judicial districts with several justices in each
    - c. Statewide jurisdiction
    - d. Only court with general equity jurisdiction
2. County Court - Exists in each county outside New York City. Has criminal and limited civil jurisdiction.
    - a. Tort and breach of contract cases for damages up to $10,000 in 52 counties and $6,000 in the remainder
    - b. Partition of real property
    - c. Foreclosure
    - d. Redemption or satisfaction of mortgage on real property
    - e. Foreclosure of lien arising out of contract for sale of real property
    - f. Specific performance of contract for sale of real property
3. Civil Court in New York City - Has primarily civil jurisdiction.
    - a. Tort and breach of contract cases for damages up to $10,000
    - b. Landlord-tenant cases involving any amount of money
4. Criminal Court in New York City - Has criminal jurisdiction
    - a. Preliminary stages of all criminal cases
    - b. Trial of misdemeanor cases
5. District Court - In Nassau and Suffolk Counties only. Has limited criminal and civil jurisdiction.
6. City Courts outside New York City - Have limited jurisdiction.
    - a. Monetary jurisdiction varies from city to city; e.g., Albany $2,000; Buffalo $6,000
    - b. Civil and criminal jurisdiction
        - (1) Cases are limited to actions for money only, mechanic's liens, eviction proceedings, chattels

        (2) One party must reside in city

   7. Justice Courts - Very limited civil and criminal jurisdiction

      a. Criminal — misdemeanors, traffic offenses, violations of town ordinances
      b. Civil — actions for sums of money not exceeding $500, eviction proceedings

B. New York's Courts of appellate jurisdiction.

   1. Court of Appeals

      a. Seven judges elected statewide
      b. State's highest court
      c. Limited to questions of law except in criminal cases where a death sentence has been imposed
      d. Hears appeals from Appellate Division or Appellate Term

   2. Appellate Division

      a. Four Departments

         (1) First, sits in New York County
         (2) Second, sits in Kings County
         (3) Third, sits in Albany County
         (4) Fourth, sits in Monroe County

      b. Appeals are heard from five lower courts.

         (1) Supreme Court
         (2) County Court
         (3) Surrogate Court
         (4) Family Court
         (5) Appellate Term in New York City

      c. Has original jurisdiction in admission and disbarment of lawyers, proceedings to remove city magistrates, and certain controversies submitted upon agreed facts
      d. Third Department hears appeals from decisions of certain State government agencies
      e. The Governor makes appointments to the Appellate Division from among Supreme Court Justices

   3. Appellate Term

      a. In First and Second Departments only
      b. Hears appeals from New York City Civil and Criminal Courts
      c. Justices designated by Appellate Division from among Supreme Court Justices.

4. County Court

a. Hears appeals from justice courts and city courts within county

C. New York's Courts of Specialized Original Jurisdiction

1. Court of Claims tries cases against the State where the State has waived immunity; e.g., negligence, condemnation, breach of contract
2. Surrogate Court deals primarily with decedents' estates
3. Family Court deals with family difficulties and offenses committed by persons under 14 years of age

II. Federal Courts

A. Appellate Jurisdiction

1. Supreme Court of the United States

a. Nine justices
b. Nation's highest court
c. Final decision of questions involving the United States Constitution, federal statutes and regulations, treaties
d. Appeals may be taken from state courts only if case involves a federal question

2. United States Court of Appeals

a. Eleven circuits
b. Appeals heard from United States District Court and decisions of certain federal agencies

B. Original Jurisdiction

1. United States District Courts

a. Constitutional questions
b. Federal civil statutes and regulations
c. Federal criminal statutes and regulations
d. Diversity cases
e. Bankruptcy
f. Admiralty

C. Specialized Courts

1. Customs appeals
2. Patent appeals
3. Court of Claims
4. Tax Court

D. Administrative Agencies (e.g., FCC, SEC, NLRB) do many of the things the courts do, but they are not courts

III. What Is a Lawsuit?

A. A lawsuit is a request to the courts to determine the right and obligations of two or more parties to a dispute.

B. The person who makes the request is called the plaintiff; the person against whom the request is made is called the defendant.

1. The lawsuit is commenced by serving a summons upon the defendant. This serves to notify the defendant that he is being sued.
2. The plaintiff also serves a complaint (either with the summons or shortly thereafter) setting forth the substance of his grievance.
3. Defendant may then do any of several things:

    a. He may ignore the summons. This is called a default. When it occurs, plaintiff may enter a default judgment against the defendant.
    b. He may serve an answer admitting or denying some or all of the allegations made by plaintiff in the complaint and setting forth new facts tending to defeat the plaintiff's claim.
    c. The defendant may also demand a bill of particulars, wherein the plaintiff sets forth additional details with respect to his claim.
    d. The defendant may make various motions attacking the plaintiff's claim as insufficient or without merit.

IV. The Trial.

A. The trial is preceded by various examinations.

B. The parties come to court with witnesses and physical evidence. Depending on circumstances, they may be heard by one of the following:

1. Judge and jury
2. Judge alone (The parties may waive their right to a jury trial.)
3. Referee

C. There is a trial procedure.

1. Jury selection

    a. Trial jurors are chosen by lot from jury list
    b. Attorneys for both sides question jurors individually and excuse those not acceptable for these reasons:

        (1) Prejudice
        (2) Relatives of parties or attorneys
        (3) Knowledge of facts
        (4) Challenge

2. Judge's duties

    a. Administers oath to jurors
    b. Rules on objections and evidence
    c. Charges the jury (informs them of the law)

3. Opening

    a. Brief statements by counsel for both sides

        (1) Nature of the action
        (2) Issues involved
        (3) Facts each side expects to prove

4. Presentation of evidence

    a. Oral and documentary proof
    b. Rules of evidence

        (1) Facts only
        (2) Expert witnesses
        (3) Models

    c. Witnesses may be compelled by subpoena to come to court. Failure to appear is punishable by contempt and damages.

5. Closing

    a. Both sides sum up their cases.
    b. They may comment on evidence introduced but not on facts that are not in the record of the trial.
    c. The closing does not exceed 1 hour except with the court's permission.

6. Jury functions

The judge instructs the jury about the law of the case. The jury decides questions of fact and fixes the amount of damages. The jury renders a verdict on each.

V. The Jury Trial.

A. When is it used?

1. In action for a sum of money
2. In action for nuisance, waste, ejectment, recovery of a chattel, or determination of a claim to real property
3. In certain matrimonial cases
4. In all cases where the defendant is charged with a felony or a serious misdemeanor

B. Who serves?

   1. Names are chosen from various sources, including the assessment role
   2. Qualifications:

      a. U.S. citizen
      b. Resident of the county
      c. Age 21-75
      d. Own real property or personal property of $250, or be spouse of the owner
      e. Possession of natural faculties
      f. Be of good character, approved integrity, sound judgment, and literate in English
      g. Not convicted of felony or misdemeanor involving moral turpitude. (Jud. L. § 504)

   3. Certain people are disqualified:

      a. Judges
      b. Clerks of courts or record
      c. Sheriffs
      d. Congressmen in State or Federal legislature
      e. Duly elected Federal, State, city, county, town or village officials. (Jud. L. § 506)
      f. Certain public officers

   4. There are exemptions from jury duty but they must be claimed (Jud. L. § 507)

      a. Ministers
      b. Doctors, dentists, pharmacists, embalmers, and optometrists
      c. Active members of Armed Forces of U.S. or State
      d. Firemen, policemen
      e. Officers of sailing vessel
      f. Attorneys
      g. Newspapermen
      h. Women

I. Deciding to Litigate: Remedies Available.

A. Damages is a money judgment for torts or civil wrongs such as negligence, libel, slander, assault, battery, fraud, deceit, malicious prosecution, and false arrest. Examples:

1. A landlord neglects to fix the broken stairway in his apartment house. You fall and break your leg. You may sue him for doctor bills, pain and suffering, loss of wages, and other losses.
2. A dress manufacturer has agreed to sell you 500 dresses at $15 each but he does not deliver the dresses. You may sue for the money you lost by not having the dresses to sell.

B. Specific performance is a directive by the court ordering the defendant to do something specific. In most breach of contract cases involving the sale of goods, you may recover only money damages unless the property is unique and not otherwise obtainable.

1. Mr. Jones and Mr. Smith enter into a contract whereby Smith is to sell his house to Jones for a certain amount upon a certain date. Smith refuses to execute the deed according to the agreement. Jones may bring an action for specific performance and ask for an order directing Smith to execute the deed.
2. Chan has agreed to sell you a Ming vase — one of three in the country. But Chan refuses to deliver even though you offer to pay the price agreed upon. You may ask for a judgment directing him to deliver the vase.

C. An injunction is an order prohibiting the defendant from doing something. For example, you have employed Faber in your drug store under written contract. He has agreed not to engage in the drug store business within a certain radius of your drug store for 1 year if he leaves. He leaves and within 3 months you learn he is about to open a drug store within this radius. You may ask the court for an injunction to prevent him from doing this.

1. Either party generally has a right to a jury trial in a suit for money damages but this right may be waived.
2. There is no jury trial in a suit for specific performance or in an action for an injunction.

II. Settling Out of Court

A. Your lawyer will usually attempt to settle out of court. A lawsuit is the last resort.

1. These are factors he will consider:

   a. Insurance
   b. Assets of defendant
   c. Calendar delay

III. Jurisdiction Over Defendant

- A. In most cases the plaintiff and the defendant live or do business in the same community where the lawsuit arises. Suit is brought in the local court and defendant is served locally.

- B. Sometimes, however, defendant lives out of the State. Plaintiff may sue in defendant's home state, or in some situations may bring suit in a local court: A Delaware motorist runs down Moffatt in New York. Moffatt may take advantage of the non-resident motorist statute and bring suit in New York without having to follow defendant into his home state.

- C. As a general rule the substantive law of the state where the tort was committed will prevail. In the case of contracts, the law of the state with the most significant contract will be applied: Smith, a resident of New York, is injured in Utah but brings suit in New York. Utah law will still prevail.

- D. When alternate forums are possible, consideration will be given to the following:

    1. Amount involved (statutory limitations)
    2. Calendar delay
    3. Character of jury panels in particular communities
    4. Procedural advantages (e.g. -- extent of pretrial examination)

IV. The Cost of Litigation

- A. Expenses and court fees

    1. Witness fees
    2. Filing fees
    3. Court costs
    4. Fees for serving papers
    5. Disbursements

- B. Attorney's compensation

    1. Methods

        a. Fixed in advance — agreement to pay fixed fee, win or lose
        b. Contingent fee — usually a fee only if there is a recovery
        c. Combination of above — contingent fee with a fixed minimum agreed upon
        d. Fixed rate per hour — usually with complicated and lengthy litigation involving large amounts
        e. Regulated fee — local court rules (The First Department prescribes a contingent fee schedule in negligence and wrongful death actions. A fee in excess requires court approval.)
        f. Attorney's lien

V. What Evidence Can Be Used?

A. Courts follow rules of evidence to determine competency of a witness to testify about certain matters.

1. Formerly a party who had an interest in a matter was disqualified from testifying. This is no longer true. Either party or any interested party may testify. Usually conversations with a party now dead may not be testified to by an interested party. There are some exceptions to this rule.
2. There are privileged communications. Examples:

   a. Husband-wife
   b. Attorney-client
   c. Clergyman-penitent
   d. Physician-patient

3. There are rules against self-incrimination. No witness in any legal proceeding can be required to answer questions which would tend to incriminate him; that is, anything tending to subject him to a fine or imprisonment, forfeiture or confiscation of land, or to a penalty.
4. Hearsay evidence is inadmissible. Most evidence, written or oral, not based on the witness' own personal knowledge or observation but on what someone else has said is excluded. To be acceptable,the evidence must be under oath and subject to cross-examination: When Porter testifies that Blank told him that he saw the car go through a red light, this is hearsay to Porter and inadmissable. Blank must testify about the car going through the red light.

VI. Pretrial Procedure: Exchanging Information

A. Pleadings and verification

1. Complaint — a written statement of plaintiff's claim
2. Answer — the written defenses asserted by defendant
3. Counterclaim — affirmative claim made by defendant
4. Reply — written statement by plaintiff after defendant's answer

   a. Where answer contains a counterclaim
   b. Where answer contains new matter constituting a defense by way of avoidance

5. Vertification — affidavit accompanying the pleading and swearing to the truth of the statements (Falsifications are subject to perjury.)

B. Bill of particulars — In certain cases, statutes and rules provide that if defendant proceeds according to law, you must give him details of your claim in a bill of particulars including dates, locations, injuries, items of damage, etc..

C. Examinations before trial — It must usually be shown that the particular information sought is material and necessary and that it cannot be readily obtained except by an examination.

D. Physical examination — The defendant may be entitled to have his doctor examine you. If, for example, you sue defendant for permanent injuries, he may be entitled to have his own doctor examine you before trial.

E. Admissions — You may be requested to admit the truth or authenticity of a statement. Suppose defendant serves a written request upon you to admit the truth of some facts he has set up in his defense. If you make a sworn denial and he succeeds in proving his facts, you may have to pay the expense he incurred in proving the facts.

F. Discovery and inspection — A party seeks to examine your books and papers and to find out whether you have other articles or materials in your possession relevant to his case. So when you sue on a contract, defendant may claim partial payment and seek to examine your books and records for any data which may be necessary to his defense of having made payment.

G. Pretrial conference — Designed to shorten the trial

1. Simplify and limit issues to be tried
2. Procure admissions to avoid unnecessary proof
3. Limit number of expert witnesses
4. Effect settlement

VII. Enforcing the Judgment

A. Execution — Court order issued to sheriff to enforce money judgment

B. Garnishment

C. Specific performance or injunction — Court order operates directly on the individual involved and failure to obey renders him liable to contempt proceedings which can culminate in fine and/or imprisonment.

D. Supplementary proceedings — A proceeding to collect a money judgment either before or after execution as when the judgment debtor is examined to discover his assets. In a case where you have a judgment against Poole and you think he has a bank account or money owed to him which you want to prevent him from assigning, you obtain an order directing him to appear at a specified court at a certain time with books, papers, and records which may give you information concerning his ability to pay the judgment. Such order usually also restrains him from assigning any of his property. You may serve similar orders upon a bank or safe deposit company where you have reason to believe Poole has an account or personal property in his own or someone else's name.

E. Enforcement of judgment in another jurisdiction — A judgment obtained in the courts of one state is usually given full faith and credit in another state, provided it is based on proper jurisdiction. Execution, however, cannot issue outside of the state where the judgment is obtained. So if you recover a judgment against Murphy for $50 in New York and his only property is in New Jersey, you may not issue execution in New Jersey, but you may bring suit in New Jersey on your New York judgment and obtain a New Jersey judgment. The facts of the case are not tried again.

VIII. The Appeal and Its Costs

A. Stay of execution — Generally the losing party must obtain an order from the court in order to stay execution. He may also put up security as provided by statutes.

1. Security may be cash or bond of a surety company. The rate is usually about $20 per thousand.
2. Usually the security covers the amount of the money judgment and possible costs and disbursements which may be awarded should the appealing party lose the appeal.
3. A poor person does not have to furnish an undertaking to perfect an appeal.

B. Stenographer's transcript of the minutes

1. To prepare record on appeal
2. To inform appellate court of proceedings in lower court

C. Printing or record

1. Briefs, reply briefs, minutes, pleadings, judgment roll, and the notice of appeal
2. Copies for each member of the appellate court

IX. Legal Services Are Available

A. Services of bar associations

1. "A man who is his own lawyer has a fool for a client."
2. The bar association of your county, city, or the State serves the public as well as its own members.
    a. Many bar associations have lawyer referral service.
        (1) The bar association has a panel of lawyers and will recommend one particularly suited for specific cases.
        (2) The initial consultation fee, a nominal one, is fixed by the association.
    b. Bar associations work with legal aid offices. People who can't afford to pay are given help.

   c. Many bar associations have a public relations committee issuing material informing the public about legal protection.

B. Services of your family lawyer.

1. He will take care of your legal affairs, large or small.
2. He will employ a specialist if it is necessary or if you request it.
3. He is at your service to advise you and to protect your family.

C. Services of Office of Economic Opportunity — Neighborhood law offices are available to help in civil matters (no criminal cases).

Course Two

I. Contract Defined

A. A contract is an agreement between two or more parties which the law recognizes and enforces as a legal obligation.

B. Almost all business dealings are based on contracts.

C. Every sale is in reality an executed contract.

1. Insurance contracts
2. Contracts to buy property
3. Contracts of employment
4. Security agreements (formerly conditional sales contracts)
5. Promissory notes
6. Marriage

II. The Elements of a Contract

A. Mutual assent or meeting of minds is usually shown by offer and acceptance.

1. An offer is a proposal to do something or to refrain from doing something.
2. But if an offer is withdrawn at any time before acceptance, there is no contract.

   a. "Offer no longer good after July 1, 1977." This means that after that date, an acceptance will have no effect.
   b. An auctioneer says, "How much am I bid for this clock?" (he has asked for offers.) A bidder replies, "Fifty dollars." The bidder's wife reminds him that they already have a clock. So the bidder says, "I retract." (He has withdrawn.) The auctioneer bangs his gavel and says, "Sold for fifty dollars." The auctioneer is wrong. He cannot accept a withdrawn offer. Since there is no mutual assent, there is no contract. But if he had brought the gavel down before the bidder retracted, there would have been an offer and acceptance — the elements of a contract.

3. An offer to sell may be made irrevocable during a certain block of time (an option). It is a contract to hold an offer open. When John says that until July 1 you have the right to buy his farm for $20,000 if you pay him $50, he cannot revoke his offer until after that date.
4. General advertising of goods for sale or services is usually not an offer. It is an invitation to make an offer.
5. An acceptance is a compliance with the exact terms of the offer. (But see Per. Prop. L. § 84 - a.): Jesop says he

will sell a gold watch for $10 and Gonne counteroffers with $5. There will be a contract if Jesop accepts the $5. If not, there is no contract.

6. The offer must be made before it can be accepted. For example, Purvis loses his dog, calls the newspaper, and inserts an ad offering a $100 reward. Before the paper is printed Mokus finds the dog and returns it. Next day Mokus sees the ad and demands a reward. Legally he is not entitled to it because there was no contract.
7. Although no verbal acceptance is made, acceptance may be implied from the action of the parties. For example, Flint says to Pratt, "I will rent my garage to you from September to March for $10 a month." On September 1 Pratt puts his car in the garage. Pratt has accepted the offer because of his action. Flint must now acknowledge the contract.
8. In determining whether an acceptance was made before the offer was withdrawn, the method of acceptance is important. One who makes an offer my mail is considered to have made the post office the agent for receiving acceptance. For example, Bale write Phillips, "I will sell you 100 barrels of cider at $5 per barrel. Reply at once." Phillips wires back, "I accept your offer. Check to follow." Before receiving the wire, Bale calls Phillips and revokes the offer. Thus there is no contract. But if Phillips had sent acceptance by mail, there would have been a contract when the letter was posted. This is true even though Bale would have received the wire before the letter.

B. Consideration is the giving of something of value to the other party or the giving up of something of value to oneself. This may be the giving of a promise or the relinquishing of a right. For example, Ford claims that Meyer has caused him damage for which Meyer is responsible. Meyer says he will give Ford $100 if Ford will relinquish his claim. (The $100 is consideration from Meyer to Ford.) Relinquishment of claim is consideration from Ford to Meyer.

1. Consideration has to be bargained for at the time of the contract. For example, "You took care of me when I was sick. I will give you $1000." This statement offers present consideration or promise to pay. So there is no contract. But the statement, "If you will take care of me, I will give you $1000," is a binding contract if care is given.
2. Consideration must be real or the contract is illusory.

C. The parties to a contract must be competent.

1. This is a corollary to the first element of a contract. The law assumes there can be no mutual assent if the parties are not competent.
2. A contract entered into by an insane person is void and of no effect.
3. A contract by a married woman is good and as enforceable as any other. (Earlier law held otherwise.)
4. An infant's contract is voidable to the infant but not void: Mary Smith, 17 years old, buys a platinum fox fur for $1 down and $1 a week. The next day the store owner, learning of her infancy, wants the coat back, Mary can hold him to the contract, which can be voided only by her. But a week later she does not pay her dollar and the store owner sues for the balance due. Mary defends her suit on the grounds of infancy, disaffirming the contract. She wins and does not have to pay the balance due, but she does have to return the fur since she cannot keep the fruits of the contract and deny her obligation to carry it out at the same time.

   a. An infant's conveyance of real estate, granting of a power of attorney, or appointment of an agent is voidable.
   b. An infant's contract may be ratified, expressly or by his behavior, after he has attained his majority. Exception: An emancipated infant over 18 years of age may be held for his business contracts. And an infant may be held for the reasonable value of necessities purchased by him. (See Educ. L. § 281.)

D. A contract is not binding if it is made for an illegal purpose, even if there are both mutual assent and competent parties.

1. Smith hires Jones for 1 year to run a dice game for him. Jones is fired after one night and sues Smith for his lost wages and broken employment contract. Jones cannot recover a cent because gambling is illegal. There is no enforceable contract.
2. Frank says to George, "I love your wife and want to marry her. She is bringing divorce action against you, and if you will not contest the action I will give you $10,000." There is no enforceable contract here because it is against public policy to have the sanctity of the home invaded.

III. Written and Oral Contracts

A. Some contracts must be written to be enforceable.

1. Leases or agreements to lease for more than 1 year

2. Contracts to sell real property
3. Contracts to answer for the debt or default or another
4. Contracts to sell personal property over the value of $500 unless partially executed at the time of the sale, or goods made expressly for buyer and not generally usable
5. Contracts by their terms not to be performed within a year
    a. Sam hires Frank to work for him, payment to be made on Sam's death. The contract need not be in writing since Sam may not live a year. Hence the contract may be performed within a year.
    b. Milo agrees to sell Henry 2 quarts of strawberries each year for 3 years at a certain price. The contract must be in writing to be enforceable since by its terms it cannot be performed within a year.
6. Contracts made in consideration of marriage
7. Contracts to pay debts previously discharged in bankruptcy
8. Contracts to bequeath property or to establish a trust

B. A written contract does not have to be a formal document.

1. An exchange of letters may compromise a written contract.
2. Memorandums may be held to constitute a contract when signed by the party to be charged.

C. It is generally wise to have a contract written even if the law does not require it.

1. People have short memories if it will cost them money to remember.
2. Frequently, oral contracts are made without other people being present, and it becomes one party's word against the other's.
3. If any part of the contract is written, all of it should be written. Oscar agrees in writing to sell Henry his car for $100, assuring Henry on the side that he will buy it back for the same price after 1 week if Henry's wife does not like it. Oscar buys it back for only $35. The agreement to repurchase should have been in writing to comply with the statute of frauds. The entire contract between the parties is assumed to have been merged in the written contract of sale.

D. If any writing constitutes a legal contract, it will be assumed to constitute the whole agreement and all terms in it will be binding. The fact that it is labeled "Offer to Purchase" does not prevent it from being a binding contract.

I. Warranties

A. "Let the buyer beware" is one of the oldest principles of common law. Buyers should make an ordinary inspection of goods to be sure there are no defects.

B. A warranty is created if at the time of the sale the vendor asserts a fact of which the buyer is ignorant and on which he relies in making the purchase.

1. The seller's statements of opinion about the value or worth of the article and sales talk are not treated as warranties.
2. If the buyer is unwilling to rely upon his own judgment, he may demand from the seller an express warranty against defects.

C. A warranty is not a part of the sales contract. It is collateral to it and no particular form is required.

1. The warranty can be made at the time of the sale.
2. If a warranty is made after the sale has been consummated, it need not be supported by separate consideration to be binding. (Gen. Oblig. L § 5-1103) Former law held that separate consideration was necessary to make the warranty binding.

D. In every sale, there are certain implied warranties which are binding — even though not actually stated. These are some of the more familiar ones:

1. That the seller has title or the right to convey title
2. That the goods purchased for a particular purpose will serve that purpose
3. That the bulk of the goods will conform to the sample when the goods are purchased from a sample
4. That goods will correspond to the description when the purchase is made from the seller's description
5. That food sold is fit for human consumption

II. Assignment of Contracts

A. A third party may in some cases be substituted for one of the original parties to a contract.

B. A party to a contract may transfer or assign rights which he has acquired under the contract to another. (This does not include the claim to personal services.)

C. Obligations may not be assigned without the consent of the other party.

D. Assignments can be made by law:

1. To the executor or administrator of a deceased's estate
2. To a trustee who may enforce assignments for the benefit of creditors

III. Enforcement of Contracts

A. You may validly refuse to perform your contract in a few situations.

1. Where the other party prevents you from performing: Smith hires Carpenter to fix his roof and refuses to let him put up a ladder. Smith cannot sue Carpenter for failure to fix the roof.
2. Where it is impossible to perform: Smith's house burns down. He cannot sue Carpenter for failure to fix the roof.
3. Where it becomes illegal to perform: The town council passes an ordinance prohibiting people from going on roofs. Smith cannot sue Carpenter for failure to fix the roof.
4. Where the other party has previously waived performance or the contract has been mutually rescinded.

B. Generally, when one party to a contract refuses to perform, the other must rely on a suit for damages as his means of enforcement.

1. If there is no injury, nothing will be recovered: John agreed to sell Mary a dog for $5. Mary agreed to pay but later refused. The next day Nancy bought John's dog for $10. John will not recover anything if he sues Mary for breach of contract because he was not injured.
2. The measure of damages is generally the amount of the injury plus those losses naturally resulting from the injury: Smith pays Carpenter $50 to fix a roof in his absence. Carpenter does not fix it, and a $300 wardrobe is ruined by water leaking through the roof. Smith can recover $350 in damages.
3. The injured party has a duty to minimize damages. So Smith cannot recover for all damages if he saw water leaking on the wardrobe and took no corrective measures.

C. When damages are not an adequate remedy, a court will order specific performance of the contract according to its terms.

1. Every piece of land is considered unique, and a contract to sell land may be specifically enforced.
2. Although personal services are unique, specific enforcement of a contract of employment would be in violation of the 13th Amendment — prohibition against involuntary servitude. An employer whose employee has refused to work can recover damages only. He cannot force the employee to work. He may, however, be able to prevent the employee from taking similar work elsewhere.

D. Statute of limitations — An action to enforce the obligations of a contract must be started within 6 years of the date of breach.

COURTS (CONCLUDED)

IV. Installment Contracts

A. Formerly called conditional sales contracts, chattel mortgage notes, or time sales contracts, they are now called security agreements. Most security agreements have the following characteristics.

1. A down payment is required and is forfeited if the goods are repossessed.
2. If the contract is breached, title and the right to repossession remain with the seller until the last payment is made.
3. The contract is assignable and is generally assigned to a bank or other lending institution.
4. When one payment is not made on time, all remaining payments may be declared due by the seller at once and an attorney's fee collected, in addition to interest.
5. The property may not be moved to a new location without the consent of the seller. Under the law, mortgaged property (conditional sales property) cannot be sold or secreted without the consent of the mortgagee.

B. The parties have certain right after the property has been repossessed, whether through legal process or agreement.

V. Summary

A. A contract is an agreement that is recognized and enforceable by law.

B. Contractual law governs most of our business dealings which have a contractual basis.

C. These are the ingredients of an enforceable contract:

1. Mutual assent (offer and acceptance)
2. Competent parties
3. Legal purpose
4. Consideration
5. Writing (in some cases)

D. A contract can be enforced in two ways:

1. By specific performance (in some cases)
2. By a suit for damages

REAL ESTATE

Session 3

I. What Is Real Property?

A. Land

B. Permanent buildings

C. Growing trees, perennial shrubs, and grasses

D. Minerals, oils, and gases

E. Unharvested crops

F. Natural materials and objects affixed to the land so that their identity is lost

1. Wooden fences
2. Stones

G. Wells and springs

H. Natural water courses

I. Easements

II. How Is Real Property Owned?

A. Single ownership

B. Common tenancy (Each one owns a fractional part of the whole and anyone may convey his own interest.)

C. Joint tenancy (The survivor inherits all.)

D. Tenants by the entirety (The owners are husband and wife in a joint tenancy. Note: Illustrate how death, divorce, separation, etc. affect ownership.)

III. Types of Ownership of Real Property

A. Fee — complete ownership

B. Life estate — ownership during life

C. Estate for years — land interest under a contract giving possession for definite and limited period of time (a lease)

IV. Who Can Own, Buy, and Sell Real Property

A. Anyone can own real property.

B. Anyone can sell real property, except persons under 18 or mental incompetents. For them, special court proceedings must be taken for authorization of sale. See GOL § 3-101(3).

C. Deeds made by minors, mental incompetents, and intoxicated persons may be voided by them.

D. If a husband owns property in his own name, he can convey a good title without his wife executing the deed unless he owned it while married before September 1, 1930.

V. Methods of Obtaining Ownership of Real Property

A. Descent — interest in real property transferred to heirs because of death (no will)

B. Wills — ownership in real property transferred as set forth in will

C. Adverse Possession — continuous, actual, exclusive, and open occupation for 15 years, which is hostile or under claim of right

D. Deed (also called conveyance) — a writing subscribed to (Use a sample deed.)

E. Eminent domain — taking of land for public use (Compensation is fixed by the courts.)

F. Prescription — obtaining easement rights after 10 years under similar circumstances as obtaining title by adverse possession

VI. The Deed

A. The deed must be in writing and be signed by the owner or his agent.

B. The seller is called the grantor. The buyer is the grantee.

C. Parties to a deed must be identified.

D. The deed must describe the real property conveyed.

E. If the deed is not acknowledged, it may be good only against the grantor or his heirs.

F. To be effective the deed must be delivered and accepted.

G. The deed conveys only what the grantor had — unless covenants are included.

H. If the deed is not recorded, it is void against a subsequent purchaser for value without notice if the later purchaser records his deed first.

VII. Deeds and Deed Covenants (Use sample forms.)

A. Warranty Deed — warrants title (See D below.)

B. Quitclaim deed — conveys only the grantor's interest

C. Bargain and sale deed — property granted

D. Deed convenants

1. That seller owns the fee simple (seizin)
2. That no one can oust the buyer (warranty and quiet enjoyment)
3. That seller will make or obtain any other assurance of the title if necessary
4. That there are no encumbrances

    a. Liens
    b. Leases
    c. Easements
    d. Encroachments
    e. Miscellaneous

E. Lien convenant — agreement to hold proceeds of sale as trust fund to pay costs of improvements

VIII. Sale and Purchase of Real Property (Use specimen contract.)

A. Contract of sale

1. To be enforceable, the contract must be written. But when it is oral it may be enforced if the buyer makes valuable improvements or is given possession and also pays part or all of the price.
2. The property must be described with reasonable certainty.
3. The sale price must be expressed.
4. The contract must be signed by the parties or their authorized agents.
5. If no time for performance is expressed, reasonable time is implied.
6. An action may be brought for specific performance if there is a breach of contract.
7. The contents of the contract govern all the subsequent rights and obligations of the parties until the deed passes, except that there is an implied promise that the seller will give a marketable title. (Discuss the general meaning of marketable title.)
8. After the buyer accepts the deed, his contract rights end and his rights depend on what is contained in the deed.
9. If the contract does not provide otherwise, the provisions of Real Property Law, §240-a, are effective in case the property is destroyed or taken by eminent domain.
10. Unless the contract states that the date of performance is "of the essence," either party has a reasonable time after the performance date to perform if he cannot do so before.

B. Matters included in contract of sale (Items vary according to local custom.)

1. Sale price and down payment
2. Payment of balance
3. Proration of taxes
4. Special assessments

    a. Sewer
    b. Water
    c. Sidewalk and street
    d. Miscellaneous

5. Rights of parties

    a. Fire
    b. Destruction
    c. Taking by eminent domain

6. Fire insurance premiums
7. Disposition of mortgage
8. Broker
9. Tenancies
10. Rents
11. Time and place of closing
12. Default procedure
13. Time of possession
14. Personal property included

    a. Storm windows and screens
    b. Range
    c. Refrigerator
    d. Washer
    e. Dryer
    f. Awnings
    g. Drapes
    h. Carpeting
    i. Fuel
    j. Miscellaneous

15. Survey or staking property
16. Type of deed
17. Condition of title
18. Contingencies

    a. Obtaining mortgage
    b. Selling another property

        (1) Time limitations
        (2) Right of parties

19. Death of one party
20. Liens or encumbrances
21. Payment of mortgage expenses (if seller takes back)

22. Description of property
23. Personal property — value for tax purposes
24. Title search
25 Local requirements
26. Multiple residence law

C. Methods of financing

1. Assumption of existing mortgage
2. Extension of existing mortgage
3. Conventional mortgage
4. FHA mortgage
5. GI mortgage
6. Building loan agreement secured by mortgage
7. Second mortgage
8. Purchase money mortgage

D. Additional costs

1. Mortgage tax
2. Recording fees
3. Appraisal fees
4. Attorney's fees
5. Abstract of title or title insurance charges
6. Surveys and miscellaneous charges

E. Abstract (title examination) and title insurance: serves to verify ownership of fee by seller through examination of records.

1. Judgment liens
2. Mortgage liens
3. Mechanic's liens
4. Pending actions affecting title to the property
5. Tax and special assessment liens
6. Leases
7. Maps affecting the property
8. Dower rights
9. Decedents' debts
10. Bankruptcy
11. Easements
12. Building restrictions
13. Miscellaneous agreements and liens

F. The closing

1. Execution of bond and mortgage
2. Satisfaction of existing liens
3. Clearing up encumbrances

REAL ESTATE Session 3

4. Payment of consideration
5. Escrow accounts
6. Execution and delivery of deed

G. The lawyer's function in real estate sales

1. Prepare contract of sale
2. Make abstract of title (not in some counties)
3. Review abstract of title or title policy report
4. Determine marketability of title
5. Determine if there are any liens and encumbrances, and remove them if possible
6. Clear title
7. Prepare and examine written instruments
8. Attend to closing and items of adjustment
9. Record and file instruments

NEGOTIABLE INSTRUMENTS Session 4

I. Negotiable Instruments: A Substitute for Money.

A. A negotiable instrument is a contract. But there are some important differences between it and the ordinary contract.

Ordinary contract	Negotiable instrument
Writing may or may not be required.	Writing is required.
The payment of money, performance of an act, or delivery of goods may be called for.	The payment of money must be called for.
The assignee acquires no greater rights than those held by assignor.	A holder in due course may acquire rights greater than those held by the person who negotiated the instrument to him.
The assignor makes certain warranties but does not guarantee performance.	An endorser makes warranties and guarantees, conditionally, that instrument will be paid.

II. Essentials of a Negotiable Instruments

A. A negotiable instrument must be in writing and signed by the maker or drawer.

1. Body — printed, typewritten, or handwritten

2. Signature — handwritten
3. Ink — preferable but not required

B. The instrument must contain an unconditional promise or order to pay a sum certain in money.

1. The following examples do not comply with the requirement:

   a. Payment "when Morgan accepts my building from me" is conditional.
   b. I.O.U. $50 (signed) John Jones is not a promise to pay.
   c. A promise to pay "$200 or the equivalent in yarn" at the option of the person making the promise is a conditional promise to pay a sum certain in money.

2. The sum is certain even though it is to be paid with a stated discount or addition if paid before or after maturity.

C. It must be payable on demand or at a definite time.

1. Payable on demand

   a. If "on demand," "at sight, " or "on presentation" is expressly stated
   b. If no time for payment is expressed

2. Payable at a definite time

   a. When it is expressed to be payable on or before a stated date or at a fixed period after a stated date
   b. When it is expressed to be payable at a fixed period after sight or at a definite time subject to any acceleration
   c. When it is expressed to be payable at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor, or automatically upon or after a specified act or event

   Note: An instrument otherwise payable only upon an act or event uncertain as to time or occurrence is not payable at a definite time, even though the act or event has occurred.

D. It must be payable to order or to bearer.

1. Payable to order when drawn payable to the order or assigns of any person or when designated on its face as "exchange" and names a payee
2. Payable to bearer when drawn payable to bearer or the order of bearer, a specified person or bearer, or cash, or the order of "cash" (or any other indication which does not purport to designate a specific payee).

III. Types of Negotiable Instruments

A. Certificate of deposit — an acknowledgement by a bank of receipt of money with an engagement to repay it

B. Note — a promise other than a certificate of deposit

PROMISSORY NOTE

$150.00 Albany, N.Y., August 1, 19___

Thirty days after date I promise to pay to the order

of ____________________ Payee ____________________

One-hundred-fifty-and-00/100-----------------------------------Dollars

Maker

1. Parties
   a. Maker — person making the promise
   b. Payee — person to whom the promise is made

C. Draft (bill of exchange) — must be an order

BILL OF EXCHANGE (SIGHT DRAFT)

$500.00 New York, N.Y., August 2, 19___

At sight

pay to the order of ____________________ Payee ____________________

Five-hundred-and-00/100---Dollars

To: Drawee

Pelham, New York

Drawer

1. Parties
   a. Drawer — person giving the order

b. Drawee — person to whom the order is given
c. Payee — person to whom the money is paid

Note: The drawee is not liable until he accepts the liability. After acceptance he is known as the acceptor.

2. Forms

a. Sight draft — payable on demand or at sight
b. Time draft — payable at a future date

D. Check — draft drawn on a bank and payable on demand

IV. Nonessentials of a Negotiable Instrument

A. Can be undated, antedated, or postdated

B. Can omit statement of any consideration

C. Is negotiable even though under a seal

D. Is negotiable even if it does not specify the place where it is drawn or payable

V. Method of Negotiation

A. Delivery — instrument payable to bearer, such as a check payable to "Cash"

B. Delivery and endorsement — instrument payable to order

VI. Endorsements

A. Method

1. An endorsement must be written by or on behalf of the holder on the instrument or on a paper firmly attached
2. The endorsement works only when it conveys the entire instrument or any unpaid residue. If less, it operates only as a partial assignment.

B. Purpose

1. To transfer title
2. To give additional security for payment of the instrument by waranties of:

a. Good title or authorization to obtain payment or acceptance on behalf of one who has good title
b. Unaltered instrument
c. Genuine signatures

d. No knowledge of any insolvency proceeding instituted with respect to the maker or acceptor, or the drawer of an unaccepted instrument
e. All prior parties had capacity to contract

C. Kinds

1. Blank — a signature without additional words. No endorsee is specified, nor is further endorsement necessary for further negotiation of the instrument.
2. Special — specifies the person to whom or to whose order the instrument is made payable. Any instrument specially endorsed becomes payable to the order of the special endorsee and may be further negotiated only by his endorsement.
3. Restrictive endorsement

a. Includes a condition: Pay to Richard Roe upon completion of garage foundation.
b. Prohibits further transfer: Pay to Richard Roe only.
c. Includes words signifying a purpose of deposit or collection: Pay to the order of, for deposit only.
d. States that it is for the benefit or use of the endorser or of another person: Pay to the order of Richard Roe as trustee for Henry Brown.

4. Qualified endorsement: use of phrase like "without recourse" which limits the obligation of payment normally undertaken by the endorser.

VII. Holder in Due Course

A. A holder in due course is one who has taken a negotiable instrument under the following conditions:

1. Good faith and for value
2. A holder without notice that it was overdue or had been dishonored
3. No notice of any defense against or any claim to it on the part of any person

B. A holder in due course holds the instrument free of claims and defenses such as:

1. All claims to it on the part of any person
2. Failure or lack of consideration
3. Ordinary fraud
4. Nonperformance of any condition precedent, nondelivery, or delivery for a special purpose.

C. A holder in due course is governed by the same rules of contract law as the immediate parties to the instrument in the case of certain other defenses.

1. Forgery
2. Incompetency of maker — infancy, insanity
3. Illegality which makes the obligation absolutely void
4. Fraudulent execution, as where maker had no knowledge he was signing a negotiable instrument
5. Material alteration
6. Discharge in insolvency proceedings
7. Any other discharge, when instrument taken with notice thereof

VIII. Liability of the Parties to Negotiable Instrument

A. Liability on a negotiable instrument —either primary (absolute) or secondary (conditional). The person primarily liable on an instrument is the person who by the terms of the instrument is absolutely required to pay it. All other parties are secondarily liable.

B. Primary liability of maker and acceptor

1. Admits the existence of the payee
2. Admits capacity to endorse

C. Secondary liability

1. Admits the existence of the payee and capacity to endorse
2. Warrants that upon notice of dishonor or protest he will pay the amount of the instrument to the holder or to any endorser who takes it up

D. Liability of qualified endorser — by transferring "without recourse" the transferor does not warrant that there exists no defense of any party as against him. But he does warrant that he has no knowledge of such a defense. All warranties referred to in VI, B are applicable to a qualified endorser.

E. Secondary liability of accommodation parties

1. An accommodation party signs the instrument to lend his name to another party to the instrument.
2. When the instrument has been taken for value before it is due, the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

IX. How to Collect from Parties Secondarily Liable.

A. Proper presentment. Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee, or other payer by or on behalf of the holder.

1. Time

a. Where an instrument is payable at (or fixed period after) a stated date, any presentment or acceptance must be made on or before the day it is payable.
b. Where an instrument is payable after sight, it must either be presented for acceptance or negotiated within a reasonable time after date or issue, whichever is later.
c. Where the instrument shows the date on which it is payable, presentment for payment is due on that date.
d. Where the instrument is accelerated, presentment for payment is due within a reasonable time after the acceleration.
e. Where a secondary party is liable, presentment for acceptance or payment is due within a reasonable time after liability arises.
f. Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the following full business day for both parties.
g. Presentment to be sufficient must be made at a reasonable hour, and if a bank, during its banking day.

2. Procedure for presentment

a. Actual presentation
b. Acceptance or payment demanded

(1) Method of presentment

(a) By mail
(b) Through a clearing house
(c) At a place of acceptance or payment specified in the instrument, or if there be none, at the place of business or residence of the party to accept or pay.
(d) If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place, presentment is excused.

B. Notice of dishonor.

1. Notice of dishonor may be given to any person liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. Also, an agent in whose hands the instrument is dishonored may give notice to his principal. Or a bank may give notice to its customer or to another agent or bank from which the instrument is received.
2. Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.
3. Form of notice is immaterial. But it must be given in a reasonable manner.

4. Notice of dishonor is necessary to charge an endorser or drawer. A drawer is discharged if the drawer becomes insolvent during the period of delay in giving notice. An endorser is discharged in any event.

X. Discharge of Negotiable Instruments

A. Discharge from liability on a negotiable instrument

1. To the extent of payment or satisfaction, even though made with knowledge of a claim of another person to the instrument, except if claimant supplies indemnity or enjoins payment by court order

   Note: A party will not be discharged of liability who in bad faith pays or satisfies a holder who acquired the instrument by theft (unless having the rights of a holder in due course) or who pays or satisfies the holder of an instrument which has been restrictively endorsed in a manner not consistent with the terms of such restrictive endorsement.

2. Payment or satisfaction made with the consent of the holder by any person, including a stranger to the instrument
3. Tender of payment

   a. Discharges any party to the extent of further interest, costs, and attorney's fees
   b. Holder's refusal of tender discharges any party who has a right of recourse against the tendering party
   c. Where the maker or acceptor of an instrument, other than a demand, is ready to pay at the place of payment specified in the instrument, it is equivalent of tender

4. Discharge by holder without consideration

   a. By noting such discharge on the face of the instrument or the endorsement
   b. By intentionally cancelling the instrument on the party's signature, by destroying the signature, or by striking out the signature
   c. By renouncing his rights (signed writing) and delivering the instrument to the party

5. Release or agreement not to sue any person against whom the party has a right of recourse or, if, without consent, the holder agrees to suspend the right to enforce the instrument or collateral against such party.
6. Impairment of the collateral for the instrument
7. Reacquisition of the instrument (A prior party discharges an intervening party as against the reacquiring party and the reacquiring party may cancel endorsements not necessary to his title. Such cancellation discharges that endorser.)

8. Fraudulent and material alterations
9. Certification or acceptance (Where the holder assents to an acceptance varying the terms of the draft, each drawer and endorser who does not affirmatively assent is discharged.)

XI. Checks

A. Presentment of checks for payment

1. A check must be presented for payment within a reasonable time after its issue
2. Failure to present the check for payment within a reasonable time discharges endorsers A drawer would be discharged only to extent of loss caused by delay.

B. Certification of checks

1. A certified check is a regualr check drawn on a bank by a depositor and accepted in advance of payment by the bank.
   - a. A drawee bank is under no obligation to certify a check unless otherwise agreed.
   - b. The certification consists of a promise on the part of the bank that it will pay the check upon presentation for payment at a later date.
2. Certification of a check carries with it different results, depending upon whether the drawer or the holder has it certified.
   - a. When the holder obtains certification, the drawer and all prior endorsers are discharged.
   - b. When the drawer obtains certification, the drawer remains secondarily liable as in any other instance when a drawee assents to the order of a drawer.
3. When a check has been certified, a bank shall not be required to stop or refuse payment.

C. Death of the drawer of a check revokes the authority of the bank to pay, except if payment is made without notice of the death, and except that bank may pay checks for 10 days after death.

D. A bank is liable to a depositor for payment of a forged or raised check if within 1 year after the return to him of the voucher of payment, the depositor notifies the bank that the check was forged or raised. The time limit is 3 years in the case of a forged endorsement.

BUSINESS ORGANIZATION

Session 5

I. Sole Proprietorship — a business owned by an individual working alone or an individually owned business with one or more employees

A. Advantages

1. Ease of formation and dissolution
2. Low cost of operation
3. Concentration of authority
4. No dilution or sharing or profits
5. Flexibility of organization
6. Secrecy of operations
7. Relative freedom from governmental control

B. Disadvantages

1. Unlimited liability for debts
2. Difficulty in raising capital
3. Limited life of organization
4. Lack of continuity of management
5. No assistance or advice of co-owners

II. Partnership — a voluntary association of two or more persons to carry on a business for profit with the partners sharing the profits and losses

A. General partnership

B. Limited partnership

C. Combination partnership

1. A partnership, as such, can be a member of another partnership, if that is the intent of the parties.
2. A close corporation can be a partner.

D. Advantages

1. Ease of organization — partnership agreement
2. Strength of credit — credit of all partners is behind the debts of the partnership
3. Freedom from governmental control
4. Joint responsibility for management
5. Flexibility of control — agreement of the partners
6. Varied abilities of partners combined
7. Ease of dissolution
8. Right to an accounting by a partner
   - a. Partnership Law § 44 provides the authority for an accounting.
   - b. An action at law may not be maintained by one partner against another partner for any claim arising from partnership business unless there has been an accounting of business, a balance struck, and an express agreement to pay.

9. Taxes
    a. No double taxation on profits
    b. No income tax as such — information returns only

E. Disadvantages

1. Unlimited liability of partners despite agreement of partners (no silent partner)
2. Limited life of partnership
    a. Terminated by death of a partner
    b. Terminated at will by any partner
3. New partnership agreement at transfer or change of partnership interest
4. Divided authority
5. Difficulty in obtaining long-term credit
6. Sharing of profits
7. All responsible for acts of one partner
8. Tax liability burdensome
    a. Each partner taxed for his proportionate share in the partnership whether distributed or not.
    b. Salaries paid to partners are treated as profits distributed or as drawings against capital account. They are not deductible.
    c. Partnership is not an entity and is not entitled to certain deductions (charities). These are charged against the individual partner. The same rule applies to capital gains and losses.
    d. Partners cannot avoid tax liability by assignment of interest in partnership since any change in parties results in a destruction of old partnership and creation of a new one requiring consent of parties.

III. Joint Venture — a special combination of two or more persons, whereby in some specific venture, a profit is jointly sought without any actual partnership or corporate designation

IV. Corporation — a separate legal entity created by law, having shares of stock as indication of ownership interests and having the power to distribute profits to the stockholders by means of dividends

A. Board of directors

B. Agents of corporation (appointed by board)

C. Stockholder elections

D. Corporate powers

1. Business corporation law
2. General corporation law
3. Specific laws: Stock corporation law, banking law, insurance law
4. Corporate charter

E. Types of corporations

1. Public
2. Municipal
3. District
4. Monied (BCL § 102)

F. Advantages

1. Limited liability of stockholders
2. Unlimited life of enterprise
3. No concentration of control in board of directors and officers
4. Transfer of ownership

    a. Sale of stock does not require consent of other stockholders unless there are specific agreements in the corporate agreements
    b. Sale or transfer of stock does not change corporate status

5. Stock-sharing plans
6. Legal entity with rights and privileges apart from those of its stockholders
7. Credit and capital obtainable through sale of stock or bonds
8. Limited liability of directors and stockholders

G. Disadvantages

1. Complexity of formation
2. State requirements
3. State and federal taxes on incorporation, change of corporate structure, and taxes on transfer of stock and bonds
4. Legal expenses
5. Possible lack of freedom
6. Business limited by charter
7. Officers limited in their powers
8. Income tax

    a. Rates may be greater than on individual or partnership
    b. There is double taxation on profits and dividends (except Subchapter S corporations).
    c. Amounts paid in dividends to stockholders are not deductible as a business expense.

9. Records

    a. Stock ledgers and certificate books
    b. Minute books for directors and stockholders

    - c. Payroll books

- H. Types of corporate instruments
  - 1. Common stock
    - a. Voting rights
    - b. Ownership rights
    - c. Dividends from profit
  - 2. Preferred stock
    - a. Preference in receiving dividends or surplus from profit
    - b. Return a specified amount
    - c. Specified voting rights
    - d. Preference in liquidation
  - 3. Bonds
    - a. Promissory notes of corporation
    - b. Interest in specified amount
    - c. No profit sharing
    - d. No voting rights unless specified
      - (1) Secured bonds
        - (a) Sinking fund — a certain specified amount set aside for bond payment
        - (b) Mortgage bonds — payment secured by mortgage on equipment or property
      - (2) Call of bonds
        - (a) Callable before maturity
        - (b) Prepayment
    - e. Debenture — unsecured bond

V. Trade Names and Fictitious Names

- A. Individuals or partnerships
  - 1. Certificate must be filed with county clerk (P. L. § 440)
  - 2. There cannot be a conflict with any other trade name on file or in use.
  - 3. The name cannot be contrary to public policy and must not be prohibited by law.
- B. Corporations
  - 1. The name of the corporation is limited by the corporation laws of the State and must have the word "corporation," "incorporated," or "limited " (an abbreviation will do) in its name.

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2. Only the corporate name can be used.
3. The corporation may not use prohibited names such as "insurance," "bank," etc., unless specifically licensed as such.
4. The name may not conflict with another corporation's name, nor may it confuse the public.

EMPLOYMENT LAWS Session 6

I. Social Security Tax and Insurance Benefit Laws

  A. Purpose of Social Security

  B. Tax statute

    1. Employment tax

      a. Employees liable
      b. Special rules for farm and domestic workers
      c. Employer responsible for collection from employee
      d. Rates and measurement of tax

        (1) Rate schedule
        (2) Wage base

    2. Self-employment tax

      a. Liability

        (1) Excepted professions and callings
        (2) Right-to-elect coverage

      b. Tax rate
      c. Basis of tax — earnings from trade or business only
      d. Benefits — same as for wage earners

  C. Old age and survivors' insurance benefits (Social Security)

    1. Title II of Social Security Act
    2. Persons covered
    3. Eligibility for benefits

      a. Basis — "quarters" of coverage
      b. Fully insured
      c. Currently insured
      d. Veterans' credits

    4. Types of benefits

      a. Classes of retirement benefits

b. Survivors' benefits
c. Disability benefits
d. Lump sum benefit

5. Computation of retirement benefits

a. Average monthly wage
b. Benefit formula — primary insurance amount
c. Maximum and minimum

6. Commencement of benefits

a. Age requirements
b. Early benefits
c. Importance of filing claims

(1) Procedure and proofs
(2) Limitations on past due claims

7. Events resulting in loss or reduction of benefits
8. Family benefits
9. Disability benefits

a. Waiting period: commencement, termination
b. Disability freeze
c. Rehabilitation service
d. Reduction or suspension of benefits

10. Lump sum death payment

II. New York State Unemployment Insurance Law.

A. Nature and purpose of law

B. Employers subject to law

C. Exempt employment — electing coverage

D. Payments to fund

1. Employer only
2. Basis of payment

a. Definition of wages
b. Excluded benefits and payments

3. Factors determining rates

E. Benefits payable to unemployed persons

1. Rate — determined by average weekly wage
2. Amount and duration — accumulation of effective days

        a. Waiting period
        b. Maximum benefit — 104 days a year

F. Claim procedure

    1. Necessity for filing
    2. Qualifications determining eligibility for payments
    3. Waiting period
    4. Registration and reporting requirements

III. New York Disability Benefits

A. Coverage

    1. Employers of one or more employees
    2. Exemptions
    3. Right to elect coverage

B. Employees — exemptions

C. Contribution

    1. Employer's and employee's share
    2. Wage base

D. Eligibility for benefits

    1. Duration of employment
    2. Type of disability covered
    3. Limitations on type and period of disability

E. Benefits payable

    1. Maximum and minimum payments
    2. Reduction and suspension of benefits
    3. Effect of coverage under other laws
    4. Invalidity of assignment, waiver, execution or attachment of rights

F. Filing of claims

    1. Employed and unemployed workers' procedure
    2. Proofs of disability
    3. Appeals

G. Cause of action against third party causing disability
H. Private insurance plans

    1. Employer choice
    2. Benefits — may exceed statutory maximum

IV. New York State Workmen's Compensation Law.

A. Purpose

B. Employment covered

  1. Hazardous employments
  2. Election by employer

C. Right to compensation for injury

  1. Limitations
  2. Exclusiveness of remedy
  3. Waiting period
  4. Payment

D. Employer's obligations

  1. Treatment and care of injuries
  2. Secure compensation payments — employee agreement to pay costs or waive benefits is invalid

E. Basis of compensation

  1. Average weekly wage
  2. Nature and extent of disability
  3. Effect of payments from other sources

F. Death benefits

  1. How measured
  2. To whom paid

G. Procedure

  1. Notice of injury or death
  2. Physical examinations
  3. Determination of claims
  4. Modification, review, and appeals
  5. Time limitations on right to compensation

H. Occupational disease

V. Occupational Safety and Health Act of 1970.

A. Purpose of act

B. Employers subject to act

C. Standards

  1. Health

  2. Safety

D. Regulations

  1. Department of Labor
  2. Occupational Safety and Health Administration

E. Enforcement

  1. Inspection
  2. Citation
  3. Notification of penalty
  4. Review commission

    a. Hearing
    b. Appeal

  5. Penalties

VI. Civil Rights Act of 1964 (Equal Employment Opportunity)

A. Purpose of act

B. Scope of coverage

  1. Employers covered

    a. Number of employees
    b. Affecting commerce

C. Unlawful employment practices

  1. Employers
  2. Employment agencies
  3. Labor organizations
  4. Others

D. Equal Employment Opportunity Commission

  1. Structure
  2. Powers

    a. Investigation

      (1) Inspections
      (2) Utilization of 706 state agencies
      (3) Conduct of investigation and hearings

    b. Penalties

      (1) Injunction
      (2) Reinstatement
      (3) Backpay

3. Relationship with state agencies

VII. Age Discrimination in Employment Act of 1967

A. Purpose of act

1. General
2. Study by Secretary of Labor

B. Scope of coverage

1. Employers
2. Employment agencies
3. Unions

C. Enforcement

1. FLSA
2. Civil remedies
3. Rules and regulations
4. Criminal penalties

VIII. Equal Pay Act of 1963

A. Purpose of act

B. Scope of coverage

1. Amendment of FLSA

C. Requirements under act

D. Enforcement procedure

IX. New York Human Rights Law

A. Purpose

B. Scope

1. Exceptions and limitations

C. Requirements

1. Practice
2. Procedure

D. Discrimination

1. Public contracts
2. Defense contracts
3. Utility companies
4. Labor organizations

E. Penalties

X. Civil Service Law, Section 108 (Taylor Act)

A. Purpose

B. Scope

1. Public employees

a. Right of organization and representation
b. Exclusion of management and confidential employees

C. PERB

1. Structure
2. Procedures

a. Determination of representation status
b. Resolution of disputes

D. Prohibition against strikes

1. Local government procedures
2. Judicial review and enforcement

a. Injunction relief

APPENDIX 1 - NO-FAULT INSURANCE

In February of 1973 this State passed into law Chapter 13 of the Laws of 1973, "An Act to amend the insurance law, the workmen's compensation law and the vehicle and traffic law, in relation to establishing a comprehensive automobile insurance reparations system." Hence, on February 1, 1974, the Comprehensive Automobile Reparations Act became effective which meant motor vehicle owners in this State were required to purchase insurance, or maintain some other form of financial security, providing certain so-called "first party benefits" to most of those personally injured through the use and operation of their motor vehicles, regardless of fault. In addition, these owners would still be required to provide protection for themselves and the permitted users of their motor vehicles against their liability for injuries to others caused by their fault in those situations where an action at law still exists against them.

The Act, in an effort to accomplish its expressly intended purpose — of establishing a comprehensive automobile insurance reparations system — makes two fundamental changes in existing law. As to all automobile accident victims within the "system" it:

- Abolishes all right to recover damages for personal injuries in negligence actions except for "serious injury" cases

- Requires the owner of a "motor vehicle" to provide financial security for the payment, irrespective of fault, of a portion of the out-of-pocket expenses (called "first party benefits") of certain of those injured by the owner's motor vehicles.

The Act makes numerous references to other statutes. In some instances, references are for the purpose of definition. For example, for a definition of "owner," the Act refers to section 128 of the Vehicle and Traffic Law. In other places, it amends those other laws in an effort to harmonize them with the "no fault" law. For example, section 205 of the Workmen's Compensation Law is amended by adding a new subdivision to provide that a person is not entitled to disability benefits where "first party benefits" are payable. It therefore becomes necessary to read the Act in conjunction with other laws in order to completely comprehend it.

In the text which follows, Mr. William S. Yaus, a graduate of the Syracuse University College of Law who is presently associated with the Binghamton, N.Y., law firm of Levene, Gouldin and Thompson, has correlated the Act to the other statutes to which it makes references.

THE NO-FAULT ACT AND RELATED STATUTES

Section 1. Article eighteen of the insurance law is hereby renumbered to be article nineteen, and such law is hereby amended by adding thereto a new article, to be article eighteen, to read as follows:

ARTICLE XVIII

Comprehensive Automobile Insurance Reparations Act

Section 670. Title
671. Definitions
672. Entitlement to first party benefits; additional financial security required.
673. Causes of action for personal injury.
674. Settlement between insurers.
675. Fair claims settlement.
676. Coverage for non-resident motorists driving in this state.
677. Return to insured of premium savings.

§670. Title. This article shall be known as the "Comprehensive Automobile Insurance Reparations Act."

§671. Definitions. 1. "Basic economic loss" means, up to fifty thousand dollars per person:

(a) all reasonable and necessary expenses incurred for: (i) medical, hospital, surgical, nursing, dental, ambulance, x-ray, prescription drug and prosthetic services; (ii) psychiatric, physical and occupational therapy and rehabilitation; (iii) any non-medical remedial care and treatment rendered in accordance with a religious method of healing recognized by the laws of this state;(1) and, (iv) any other professional health services; all without limitation as to time, provided that within one year after the date of the accident causing the injury it is ascertainable that further expenses may be incurred as a result of the injury;

(b) loss of earnings from work which the injured person would have performed had he not been injured, and reasonable and necessary expenses incurred by such person in obtaining services in lieu of those that he would have performed for income, up to one thousand dollars per month for not more than three years from the date of the accident causing the injury; and

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(1) §6527 of the Education Law provides in subdivision 4(b) that the licensing requirements of Article 131 of that law do not prevent or affect the "practice of the religious tenets of any church." This practice, however, must be in good faith, *People v. Cole*, 219 N.Y. 98 (1916), and not be a shield for business undertakings, *People v. Wendel*, 68 N.Y.S. 2d 267, aff'd 272 App. Div. 1067, 75 N.Y.S. 2d 302 (1946).

(c) all other reasonable and necessary expenses incurred, up to twenty-five dollars per day for not more than one year from the date of the accident causing the injury.

"Basic economic loss" shall not include any loss incurred on account of death.

2. "First party benefits" means payments to reimburse a person for basic economic loss on account of personal injury arising out of the use or operation of a motor vehicle in this state, less:

(a) twenty percent of lost earnings pursuant to paragraph (b) of subdivision one of this section;

(b) amounts recovered or recoverable on account of such injury under state or federal laws providing social security disability benefits, or workmen's compensation benefits;(2) and

(c) any amounts deductible under the applicable insurance policy.

3. "Non-economic loss" means pain and suffering and similar non-monetary detriment.

4. "Serious injury" means a personal injury:

(a) which results in death; dismemberment; significant disfigurement; a compound or comminuted fracture; or permanent loss of use of a body organ, member, function, or system; or

(b) if the reasonable and customary charges for medical, hospital, surgical, nursing, dental, ambulance, x-ray, prescription drug and prosthetic services necessarily performed as a result of the injury would exceed five hundred dollars.

5. "Owner" shall have the meaning ascribed in section one hundred twenty-eight of the vehicle and traffic law.(3)

6. "Motor vehicle" shall have the meaning ascribed in section three hundred eleven of the vehicle and traffic law, (4) except that (a) it shall also include fire

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(2)Chapter 7 of Title 42, United States Code provides for Social Security disability benefits and Chapter 67 of McKinney's Consolidated Laws of New York (Workmen's Compensation Law) provides for workmen's compensation benefits.

(3) §128. Owner. A person, other than a lien holder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person and also includes any lessee or bailee of a motor vehicle or motorcycle having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days.

(4) §311. Definitions. As used in this article:

* * *

2. The term "motor vehicle" shall be defined as in section one hundred twenty-five of this chapter, except that it shall also include trailers, semi-trailers and tractors other than tractors used exclusively for agricultural purposes, and shall exclude fire and police vehicles, self-propelled combines, self-propelled corn and hay harvesting machines, tractors used exclusively for agricultural purposes and self-propelled caterpillar or crawler-type equipment while being operated on the contract site.

§125. Motor Vehicle. Every vehicle, except electrically-driven invalid chairs being operated or driven by an invalid, operated or driven upon a public highway by any power other than muscular power which includes electric power obtained from overhead trolley wires, except vehicles which run only upon rails or tracks.

and police vehicles, and (b) it shall not include a motorcycle (as such term is defined in section one hundred twenty-three of the vehicle and traffic law).(5)

7. "Insurer" means the insurance company or self-insurer, as the case may be, which provides the financial security required by articles six or eight of the vehicle and traffic law.(6)

8. "Member of his household" means a spouse, child or relative of the named insured who regularly resides in his household.

9. "Uninsured motor vehicle" means a motor vehicle, the owner of which is (a) a financially irresponsible motorist (as defined in subdivision j of section six hundred one of this chapter)(7) or (b) unknown and whose identity is unascertainable.

10. "Covered person" means any pedestrian injured through the use or operation of, or any owner, operator or occupant of, a motor vehicle which has in effect the financial security required by articles six or eight of the vehicle and traffic law (8) or which is referred to in subdivision two of section three hundred

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(5) §123, Motorcycle. Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

(6) Article 6 of the Vehicle and Traffic Law (§§310 to 321) is entitled the "Motor Vehicle Financial Security Act" and provides for mandatory insurance on all vehicles registered in New York. The minimum insurance required is ten thousand dollars ($10,000.00) for injuries to or death of one person in one accident, twenty thousand dollars ($20,000.00) for injuries or death of two or more persons in one accident and five thousand dollars ($5,000.00) for injury or destruction of property. Article 8 of the Vehicle and Traffic Law (§§370 and 371) provides for mandatory security to be filed with the commissioner of motor vehicles by all engaged in transporting persons for hire in privately owned motor vehicles.

(7) §601. Definitions. As used in this article:

* * *

j. "financially irresponsible motorist" means the owner, operator, or other person legally responsible for the operation of a motor vehicle involved in an accident resulting in personal injury or death who did not have in effect at the time of such accident either (a) a valid and collectible policy of bodily injury liability and property damage liability insurance or bond with applicable limits at least equal to those specified in section three hundred eleven of the vehicle and traffic law or (b) a certificate of self insurance issued by the bureau of motor vehicles of the state of New York pursuant to section three hundred sixteen of the vehicle and traffic law or (c) who has not otherwise complied with the provisions of section three hundred twelve of the vehicle and traffic law.

(8) Supra, note 6.

twenty-one of such law; (9) or any other person entitled to first party benefits.

§672. Entitlement to first party benefits; additional financial security required. 1. Every owner's policy of liability insurance issued on a motor vehicle in satisfaction of the requirements of articles six or eight of the vehicle and traffic law(10) shall also provide for; every owner who maintains another form of financial security on a motor vehicle in satisfaction of the requirements of such articles shall be liable for; and every owner of a motor vehicle required to be subject to the provisions of this article by subdivision two of section three hundred twenty-one of the vehicle and traffic law(11) shall be liable for the payment of first party benefits to:

(a) persons, other than occupants of another motor vehicle, for loss arising out of the use or operation in this state of such motor vehicle; and

(b) the named insured and members of his household for loss arising out of the use or operation in this state of an uninsured motor vehicle.

2. An insurer may exclude from coverage required by subdivision one a person who (a) intentionally causes his own injury; (b) is injured as a result of operating a motor vehicle while in an intoxicated condition or while his ability to operate such vehicle is impaired by the use of a drug (within the meaning of section eleven hundred ninety-two of the vehicle and traffic law);(12) or (c) is

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(9)§321. Exceptions. 1. This article shall not apply to any motor vehicle for the operation of which security is required to be furnished under section three hundred seventy of this chapter, including those for which a certificate is issued pursuant to section three hundred seventy-one of this chapter or under a similar law in another state except as may be provided in section three hundred seventy; to any motor vehicle operated under a permit or a certificate of convenience and necessity issued pursuant to the public service law or pursuant to section fifty-a of such law, or under a permit or certificate issued by the public utility regulatory agency of another state; nor to any motor vehicle registered pursuant to subdivision thirteen of section four hundred one of this chapter, nor to any vehicle for which a permit or certificate is in force pursuant to the interstate commerce act nor to any motor vehicle owned by the United States, any state or any political subdivisions of any state.

2. Provided, however, that any motor vehicle exempted in subdivision one of this section from the provisions of any portion of this article shall be subject to the provisions of article eighteen of the insurance law.

(10)Supra, note 6.

(11)Supra, note 9.

(12)§1192. Operating a motor vehicle while under the influence of alcohol or drugs.

1. No person shall operate a motor vehicle while his ability to operate such motor vehicle is impaired by the consumption of alcohol.

2. No person shall operate a motor vehicle while he has .10 of one per centum or more by weight of alcohol in his blood as shown by chemical analysis of his blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this chapter.

3. No person shall operate a motor vehicle while he is in an intoxicated condition.

4. No person shall operate a motor vehicle while his ability to operate such a motor vehicle is impaired by the use of a drug as defined in this chapter.

5. (this subdivision provides penalties for violations of the above)

injured while he is:

(i) committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer, or

(ii) operating a motor vehicle in a race or speed test, or

(iii) operating or occupying a motor vehicle known to him to be stolen.

3. Each insurance company which offers insurance to satisfy the requirements of subdivision one of this section shall offer such insurance without a deductible and with a family deductible of up to two hundred dollars (which deductible shall apply only to the loss of the named insured and members of his household). The superintendent may approve a higher deductible in the case of insurance policies providing additional benefits or pursuant to a plan designed and implemented to coordinate first party benefits with other benefits.

4. Insurance policy forms for insurance to satisfy the requirements of subdivision one of this section shall be subject to approval pursuant to articles seven-A and eight of this chapter.(13) Minimum benefit standards for such policies and for self-insurers, and rights of subrogration, examination and other such matters, shall be established by regulation pursuant to section twenty-one(14) of this chapter.

5. Every owner's policy of liability insurance issued in satisfaction of articles six or eight of the vehicle and traffic law(15) shall also provide, when a motor vehicle covered by such policy is used or operated in any other state or in any Canadian province, insurance coverage for such motor vehicle at least in the minimum amount required for such vehicle by the laws of such other state or Canadian province.

§673. Causes of action for personal injury. 1. Notwithstanding any other law, in any action by or on behalf of a covered person against another covered person for personal injuries arising out of negligence in the use or operation of a motor vehicle in this state, there shall be no right of recovery for non-economic loss, except in the case of a serious injury, or for basic economic loss.

2. In any action by or on behalf of a covered person, against a non-covered person, where damages for personal injuries arising out of the use or operation of a motor vehicle in this state may be recovered, an insurer which paid or is liable for first party benefits on account of such injuries shall have a lien against any recovery to the extent of benefits paid or payable by it to the covered person. No such action may be compromised by the covered person except with the

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(13)Articles VII-A and VIII of the Insurance Law provide for the regulation of insurance rates.

(14)§21. Regulations by superintendent. The superintendent shall have power to prescribe, in writing, official regulations, not inconsistent with the provisions of this chapter:

a. governing the duties assigned to the members of the staff of the insurance department;

b. effectuating any power, given to him under the provisions of this chapter, to prescribe forms or otherwise to make regulations;

c. interpreting the provisions of this chapter;

d. governing the procedure to be followed in the practice of the insurance department.
The superintendent may likewise, from time to time, withdraw, modify or amend any such regulation.

(15)Supra, note 6.

written consent of the insurer, or with the approval of the court, or where the amount of such settlement exceeds fifty thousand dollars. The failure of such person to commence such action within two years after the accrual thereof shall operate to give the insurer a cause of action for the amount of first party benefits paid or payable against any person who may be liable to the covered person for his personal injuries, which cause of action shall be in addition to the cause of action of the covered person; provided, however, that in any action subsequently commenced by the covered person for such injuries, the amount of his basic economic loss shall not be recoverable.

3. Where there is no right of recovery for basic economic loss, such loss may nevertheless be pleaded and proved to the extent that it is relevant to the proof of noneconomic loss.

§674. Settlement between insurers. 1. Any insurer liable for the payment of first party benefits to or on behalf of a covered person shall have the right to recover the amount of such benefits so paid from the insurer of any other covered person if and to the extent that such other covered person would have been liable, but for the provisions of this article, to pay damages in an action at law.

2. The sole remedy of any insurer to recover on a claim arising under subdivision one of this section, shall be the submission of the controversy to mandatory arbitration pursuant to procedures to be promulgated or approved by the superintendent.

3. The liability of an insurer imposed by this section shall not affect or diminish its obligations under any policy of bodily injury liability insurance.

§675. Fair claims settlement. 1. Payments of first party benefits shall be made as the loss is incurred. Such benefits are overdue if not paid within thirty days after the claimant supplies proof of the fact and amount of loss sustained. If proof is not supplied as to the entire claim, the amount which is supported by proof is overdue if not paid within thirty days after such proof is supplied. All overdue payments shall bear interest at the rate of two percent per month. The claimant shall also be entitled to recover his attorney's reasonable fee if a valid claim or portion thereof was overdue and such claim was not paid before the attorney was retained.

2. Every insurer, shall provide a claimant with the option of submitting any dispute involving the insurer's liability to pay first party benefits, the amount thereof or any other matter which may arise under subdivision one of this section to binding arbitration pursuant to simplified procedures to be promulgated or approved by the superintendent.

§676. Coverage for non-resident motorists driving in this state. Every insurer authorized to transact or transacting business in this state, or controlling or controlled by or under common control by or with an insurer authorized to transact or transacting business in this state, which sells a policy providing motor vehicle liability insurance coverage, or any similar coverage, in any state or Canadian province shall include in each such policy coverage to satisfy the financial security requirements of articles six or eight of the vehicle and traffic law(16) and to provide for the payment of first party benefits pursuant to subdivision one of section six hundred seventy-two of this chapter when a motor vehicle covered by such policy is used or operated in this state, and every such policy shall be construed as if such coverage were embodied therein.

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(16) **Supra, note 6.**

§677. Return to insureds of premium savings. 1. On or before November first, nineteen hundred and seventy-three, each insurer shall file with the superintendent the schedule of rates, rating plans, rating rules and rate manuals, together with the supporting information required by section one hundred seventy-eight(17) of this chapter, which it proposes to use in connection with the insurance required by section six hundred seventy-two of this chapter and by articles six and eight of the vehicle and traffic law.(18) Such rates, rating plans, rating rules and rate manuals shall be subject to disapproval pursuant to section one hundred seventy-nine of this chapter.(19)

2. The policy premium to be charged by each insurer in connection with the insurance required by section six hundred seventy-two and bodily injury liability insurance required by law shall be at least fifteen percent or, with a two hundred dollar family deductible, twenty percent below such insurer's policy premium in effect on January first, nineteen hundred seventy-three, for bodily injury liability insurance required by law and medical payments insurance; provided, however, that such reductions shall be greater to the extent that the superintendent determines that industry average premiums in effect on November first, nineteen hundred seventy-three, are lower than industry average premiums in effect on January first, nineteen hundred seventy-three. Actuarially commensurate adjustments shall be required in the case of other combinations of coverage.

3. On or before January fifteenth, nineteen hundred seventy-four, nineteen hundred seventy-five and nineteen hundred seventy-six, the superintendent shall file with the governor and the legislature a report showing the rates for the coverages provided for in section six hundred seventy-two, bodily injury liability insurance and medical payments insurance.

4. Each insurer which has in effect on February first, nineteen hundred seventy-four, with a previous inception date, an owner's policy of liability insurance shall compute and refund to the insured (no later than the next renewal date of the policy) the difference, if any, between (i) the unearned portion of

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(17) §178. Public disclosure.

1. All policy forms and rating classifications and territories filed with the superintendent shall be available for public inspection at the department.

2. Every insurer and rating organization shall monthly furnish the superintendent all changes in the rating rules and schedules of rates such insurer or rating organization is then using in this state, and shall quarterly furnish the superintendent statistical, rating and other information in support of changes in rating rules, schedules of rates and rating classifications and territories. Such rules, schedules and information shall be available for public inspection at the department.

A subsection 3 has been added by the "No-Fault" Law. §178 is part of Article VII-A of the Insurance Law.

(18) Supra, note 6.

(19) §179, part of Article VII-A of the Insurance Law, provides for enforcement of the rate regulations set forth in the Article.

the policy premium attributable to bodily injury liability insurance and medical payments insurance and (ii) the premium to be charged for such period for the coverages provided for in section six hundred seventy-two of this article and bodily injury liability and medical payments insurance.

5. In accordance with regulations prescribed by the superintendent, each insurer issuing policies which are subject to this article shall establish a fair, practicable and non-discriminatory plan for refunding or otherwise crediting to those purchasing such policies their share of the insurer's excess profit, if any, on such policies. An excess profit shall be a profit beyond such percentage rate of return on net worth attributable to such policies, as computed in accordance with the regulation required by subdivision one of section one hundred seventy-six(20) of this chapter, as is determined by the superintendent to be so far above a reasonable average profit as to amount to an excess profit (taking into consideration the fact that losses or profits below a reasonable average profit will not be recouped from such policy holders). No such plan shall be required to apply to any such policy issued or renewed with an inception date on or after February first, nineteen hundred seventy-seven. In prescribing such regulations the superintendent may limit the duration of such plans, waive any requirement for refund or credit which he determines to be de minimis or impracticable, adopt forms of returns which shall be made to him in order to establish the amount of any refund or credit due, establish periods and times for the determination and distribution of refunds and credits, and shall provide that insurers receive appropriate credit against any refunds or credits required by any such plan for policy-holder dividends and for return premiums which may be due under rate credit or retrospective rating plans based on experience.

*§2. Subdivision one of section one hundred seventy-six of such law, as added by chapter one hundred eighty-nine of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

§176. Standards for rates; competition; procedure. 1. Rates shall not be excessive, inadequate, unfairly discriminatory, destructive of competition or detrimental to the solvency of insurers. In determining whether rates comply with the foregoing standards, the superintended shall include all income earned by such insurer and any insurer controlling or controlled by such insurer or under common control by or with such insurer on all its investments of any kind and wherever located.

2. a. Except as otherwise provided in this subdivision or in paragraph c of subdivision two of section one hundred seventy-nine, prior filing of rates, schedules of rates, rating plans, rating rules and rate manuals with the superintendent or his prior approval thereof shall not be required.

b. No insurer or rating organization shall use a rating classification or territory unless it has been filed with the superintendent and either (i) he has approved it,

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(20)§176. Standards for rates; competition; procedure.

1. Rates shall not be excessive, inadequate, unfairly discriminatory, destructive or competition or detrimental to the solvency of insurers. In determining whether rates comply with the foregoing standards, the superintendent shall include all income earned by such insurer and any insurer controlling or controlled by such insurer or under common control by or with such insurer on all its investments of any kind and wherever located.

This is as §176 was chang by the "No-Fault" Law.

or (ii) ninety days have elapsed and he has not disapproved it as unfairly discriminatory or violative of public policy.

c. If the superintendent determines, after a hearing and on the basis of findings of fact and conclusions, that, with respect to any territory or to any kind, subdivision or class of insurance, competition is either (i) insufficient to assure that rates will not be excessive, or (ii) so conducted as to be destructive of competition or detrimental to the solvency of insurers, he shall order that the rates for such insurance or territory shall be regulated pursuant to article eight. Such order shall have a specified duration of not more than one year but may be renewed by the superintendent upon appropriate findings of fact, conclusions and order.

3. No policy form shall be delivered or issued for delivery unless it has been filed with the superintendent and either (i) he has approved it or (ii) thirty days have elapsed and he has not disapproved it as misleading or violative of public policy.

4. Any requirement in paragraph b of subdivision two and in subdivision three of filing with or prior approval by the superintendent may be waived by regulation adopted by the superintendent after a public hearing.

5. Rating classifications and territories and policy forms lawfully in use immediately prior to January first, nineteen hundred seventy may continue to be used thereafter, notwithstanding paragraph b of subdivision two and subdivision three.

§3. Section one hundred seventy-eight of such law is hereby amended by adding thereto a new subdivision, to be subdivision three, to read as follows:(21)

3. The superintendent shall by regulation establish a method for determining profitability (from whatever source such profits are derived), and rates of return on net worth, assets and earned premiums, with respect to each kind of insurance subject to this article, based on reasonable and uniform assumptions, including assumptions as to (i) amounts of net worth attributable to such kinds of insurance, (ii) assets available for investment generated by such kinds of insurance, (iii) federal income taxes, and (iv) average earnings on insurers' investments. Such regulations shall require insurers annually to report to the superintendent, who shall make such reports available to the public, concerning such profitability and rates of return.

§4. Section sixty-three of such law is hereby amended by adding thereto a new subdivision, to be subdivision two-a, to read as follows:

§63. Assigned risk plans. 1. The superintendent shall, after consultation with the insurers licensed to write motor vehicle insurance in this state, approve a reasonable plan or plans for the equitable apportionment among such insurers of applicants for such insurance who are in good faith entitled to but are unable to procure insurance through ordinary methods and, when such plan has been approved, all such insurers shall subscribe thereto and shall participate therein. In addition to the members of the committee elected by the subscribers to administer the plan, the superintendent shall appoint annually two additional members who shall be duly licensed insurance agents or brokers representative of broad segments of the public obtaining insurance through the plan.

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(21)Subsections 1 and 2 are reproduced at note 18, supra.

2. Any such plan shall provide for the availability to applicants of the following motor vehicle insurance coverages:

(a) for legal liability, up to fifty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, up to one hundred thousand dollars because of bodily injury to or death of two or more persons in any one accident, and up to ten thousand dollars because of injury to or destruction of property of others in any one accident; and

(b) for loss or damage to an automobile insured under a policy, up to ten thousand dollars actual cash value, subject to a deductible of not less than one hundred dollars; and

(c) for medical payments with respect to private passenger motor vehicles not for hire, irrespective of the legal liability of the insured, because of bodily injury to or death of any person insured thereunder, up to one thousand dollars.

2-a. Any such plan shall also provide for the availability to applicants of (a) twice the dollar level of first-party benefits prescribed in section six hundred seventy-two of this chapter; and (b) commensurate first-party benefits for personal injury arising out of the use or operation of a motor vehicle in any other state or Canadian province.

3. Such plan shall provide for the method of classifying risks, establishing territories and making rates applicable thereto. Such rates, except with respect to rates for the minimum limits of insurance required by article six or article seven of the vehicle and traffic law, shall be based upon loss and expense experience of the risks insured pursuant to the plan.

4. It shall be the duty of the committee designated to operate the plan to establish for the benefit of applicants standards of service to be observed by insurers participating in the plan including, but not limited to, the timely issuance of policies, certificates and endorsements, financial security forms, and the collection of required deposits.

5. Any applicant for such insurance, any person insured under such plan and any insurer affected may appeal to the superintendent from any ruling or decision of the manager or committee designated to operate such plan. All orders of the superintendent shall be subject to judicial review as provided in section thirty-four of this chapter.

6. All insurers participating in the plan shall either maintain an office in this state or establish a communications system, by means of a direct toll free telephone line, or otherwise, to conveniently process claims of the insureds.

§5. Subdivision one of the section one hundred-sixteen-a of such law, as added by chapter one thousand thirty-three of the laws of nineteen hundred seventy-one, is hereby amended to read as follows:

§116-a. Agents' contracts and brokers' accounts. 1. Where an insurer notifies an agent licensed pursuant to section one hundred fifteen or broker licensed pursuant to section one hundred nineteen that his contract or account shall be terminated: (i) with respect to policies required to be renewed by section one hundred sixty-seven-a of this chapter, the insurer shall renew such policies through such agent or broker during the period of twelve months next following receipt by the agent or broker of written notice of such termination, and the insurer shall renew the policy for any additional required policy periods through another agent or broker who has a contract or account with the insurer designated by the terminated agent or broker to be the successor agent or broker; (ii) with respect to all new business offered by such terminated agent or broker which is subject to the provisions of section one hundred sixty-seven-a of this chapter, the insurer shall accept all such business meeting the insurer's then current underwriting standards during the period of one hundred twenty days next following receipt by the agent or broker of written notification of such termination; and (iii) with respect to insurance which is subject to the provisions of section one hundred sixty-seven-b of this chapter such insurer during the period of one hundred twenty days next following receipt by the agent or broker of written notification of such termination shall renew and accept new business offered by such agent or broker provided that such renewal or new business meets the insurer's then current underwriting standards. The insurance agent or broker shall be entitled to receive commissions on account of all business renewed or written pursuant to this subdivision at the insurer's prevailing commission rate for such business.

2. This section shall not apply to (i) insurance other than insurance which is subject to sections one hundred sixty-seven-a or one hundred sixty-seven-b of this chapter: (ii) an agent who agrees to represent exclusively one insurer or a group of insurers under common management; or (iii) an agent or broker whose license has been revoked by the superintendent or whose contract or account has been terminated for insolvency, abandonment, gross and wilfull misconduct, or failure to pay over to the insurer moneys due to the insurer after his receipt of a written demand therefor.

§6. Paragraph (e) of subdivision one of section one hundred sixty-seven-a of such law, as added by chapter seven hundred seventy-one of the laws of nineteen hundred sixty-eight, is hereby amended to read as follows:

§7. Paragraph A of subdivision four of section one hundred sixty-seven-a of such law, as amended by chapter one thousand thirty-three of the laws of nineteen hundred seventy-one is hereby amended to read as follows:

§167-a. Automobile insurance policies; cancellation and renewal provisions. 1. Definitions; as used in this section:

(a) "Policy" means an automobile liability, automobile physical damage or automobile collision policy, or any combination thereof, delivered or issued for delivery in this state, insuring a natural person as named insured, or one or more related individuals resident of the same household, and under which the insured vehicles therein designated are of the following types only:

1. a motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others, or

2. any other four-wheel motor vehicle with a load capacity of fifteen hundred pounds or less which is not used in the occupation, profession or business of the insured; provided, however, that this section shall not apply: (1) to policies issued pursuant to section sixty-three of this chapter, under the New York automobile assigned risk plan, nor (2) to any policy insuring more than four automobiles, nor (3) to any policy covering garage, automobile sales agency, repair shop, service station or public parking place operation hazards.

(b) "Automobile liability coverage" includes only coverage of bodily injury and property damage liability, medical payments and uninsured motorists coverages.

(c) "Automobile physical damage coverage" includes all coverage of loss or damage to an automobile insured under the policy except loss or damage resulting from collision or upset.

(d) "Automobile collision coverage" includes all coverage of loss or damage to an automobile insured under the policy resulting from collision or upset.

(e) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term; provided, however, that any policy with a policy period or term of less than twelve months shall for the purpose of this section be considered as if written for a policy period or term of twelve months. Provided, further, that any policy written for a term longer than one year or any policy with no fixed expiration date, shall for the purpose of this section, be considered as if written for successive policy periods or terms of one year, and such policy may be terminated, if otherwise permitted by paragraph A of sub-division four of this section at the expiration of an annual period upon giving forty-five days' notice of non-renewal prior to such anniversary date.

(f) "Nonpayment of premium" means failure of the named insured timely to discharge any of his obligations in connection with the payment of premiums on a policy of automobile insurance or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit. Payment to the insurer, or to an agent or broker authorized to receive such payment, shall be timely if made within ten days after receipt by the insured of a notice of cancellation for nonpayment of premium.

2. Effective sixty days after the inception date of a policy or, if the policy is a renewal, effective immediately, no notice of cancellation shall be effective unless it is issued in accordance with the procedural requirements of the vehicle and traffic law and is based on one or more of the following reasons:

A. non-payment of premium;

B. the driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period.

3. The provisions of subdivision two shall apply to each and every coverage or limit afforded under the policy.

3-a. During the first sixty days that a policy is in force, if it is not a renewal, no notice of cancellation shall be effective unless it is issued in accordance with the procedural requirements of the vehicle and traffic law and states, or is accompanied by a statement of the specific reason or reasons for such cancellation.

4. A. Unless the insurer, at least forty-five, but not more than sixty, days in advance of the end of the policy period, mails or delivers to the named insured at the address shown in the policy notice of its intention not to renew the policy or to condition its renewal upon reduction of limits or elimination of any coverages afforded under the policy, the named insured shall be entitled to renew the policy upon payment of the premium due on the effective date of the renewal and the renewal policy shall provide that the insurer shall not cancel

such policy or reduce any of the limits or cancel any of the coverages provided thereunder except as provided in subdivisions two and three of this section. Provided, however, the named insured shall be entitled to renew such policy, upon payment of the premium due on the effective date of each renewal, for the three successive annual policy periods commencing at the first anniversary date of the policy on or after August first, nineteen hundred seventy-three and on or before July thirty-first, nineteen hundred seventy-four, unless grounds for cancellation exist pursuant to subdivision two of this section or as may be required pursuant to a program approved by the department as necessary because a continuation of the present premium volume would be hazardous to the interest of policyholders of the insured, its creditors or the public. The specific reason or reasons for non-renewal or conditioned renewal shall be stated in, or accompany the notice required by this subsection. This subsection shall not apply (i) in case of nonpayment of premium; or (ii) where the named insured or his authorized agent or broker, or any insurer of the named insured, mails or delivers written notice to the insurer that the policy has been replaced with another insurer or is no longer desired. Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

B. Notwithstanding the failure of an insurer to comply with this subsection, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.

5. When a policy is cancelled or non-renewed, other than for non-payment of premiums or the insureds having obtained substitute coverage, the insurer shall notify the insured of his possible eligibility for insurance through the New York automobile assigned risk plan. Such notice shall accompany or be included in the cancellation or non-renewal notice and shall state that notice of the availability of said assigned risk plan is given pursuant to this section.

6. A. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer, its authorized representatives, its agents, its employees, or any firm, person or corporation furnishing to the insurer information as to reasons for cancellation, reduction of limits, elimination of coverages, conditioned renewal or non-renewal, for any statement made, unless shown to have been made in bad faith with malice in fact, by any of them in any written notice of cancellation, reduction of limits, elimination of coverages, conditioned renewal or non-renewal, or in any other communication, oral or written, specifying the reasons for cancellation, reduction of limits, elimination of coverages, conditioned renewal or non-renewal, or the providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.

B. Proof of mailing of a notice of cancellation, reduction of limits, elimination of coverages or of intention not to renew or proof of the mailing of the reasons therefor, to the named insured at the address shown in the policy, shall be sufficient proof of the giving of notice and the giving of reasons required by this section.

§8. Section two hundred five of the workmen's compensation law is hereby amended by adding thereto a new subdivision, to be subdivision ten, to read as follows:

§205. Disabilities and disability periods for which benefits are not payable. No employee shall be entitled to benefits under this article:(22)

* * *

10. for any disability caused by or arising out of the use or operation of a motor vehicle where first party benefits are payable pursuant to article eighteen of the insurance law.

§9. Section three hundred twenty-one of the vehicle and traffic law, as last amended by chapter two hundred ninety-three of the laws of nineteen hundred seventy-one, is hereby amended to read as follows:(23)

§321. Exceptions

* * *

2. Provided, however, that any motor vehicle exempted in subdivision one of this section from the provisions of any portion of this article shall be subject to the provisions of article eighteen of the insurance law.

§10. Subdivision seven of section three hundred eleven of such law is hereby amended to read as follows:

7. The term "financial security deposit" shall mean for each motor vehicle the deposit with the commissioner of twenty-five thousand dollars in cash, or securities, such as may legally be purchased by savings banks or trust funds, of a market value of twenty-five thousand dollars and an additional deposit in an amount determined by the commissioner to be sufficient to satisfy the requirements of article eighteen of the insurance law.(24)

§11. This act shall take effect on February first, nineteen hundred seventy-four and shall apply to the use and operation of motor vehicles in this state on and after such date, and any policy of insurance obtained to satisfy the financial security requirements of articles six or eight of the vehicle and traffic law which does not contain provisions complying with the requirements of article eighteen of the insurance law as added by this act, shall be construed as if the provisions required by such article were embodied therein, except that (a) section six hundred seventy-seven of the insurance law as added by section one of this act shall take effect October first, nineteen hundred seventy-three; (b) sections five, six and seven of this act shall take effect August first, nineteen hundred seventy-three and shall apply to policies of liability insurance written or renewed, or which have a renewal anniversary date on or after August first, nineteen hundred seventy-three; and (c) all actions necessary to prepare for the implementation of this act may be taken prior to the effective date.

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(22)**Subsections 1-9 provide the circumstances under which an employee cannot recover workmen's compensation benefits.**

(23)**This entire section as changed is reproduced at note 9, supra.**

(24)**This section provides definitions of terms used in the "Motor Vehicle Financial Security Act."**

TIPS FOR INSTRUCTORS

1. Check room facilities: chalk, erasers, lights.
2. Introduce yourself and make a few introductory remarks.
3. Keep the atmosphere informal.
4. Avoid the use of the words "class," "teacher," "classroom," "students."
5. Use teaching aids: forms (summons, complaint, petition for letters of administration and so forth), mimeographed outlines, charts, films, overhead projector and transparencies.
6. Always allow time for discussion.
7. Encourage questions but do not let any one participant dominate the conversation.
8. Allow a 10-minute break at the end of each hour.
9. Start on time; stop on time.
10. Translate legal terms into non-technical language. You have a better chance of reaching each person if you use simple words.

NYSBA FILMS

A number of 20-minute films which correlate quite well with various topics outlined in this publication are available from the New York State Bar Association, 1 Elk St., Albany, New York 12207. Their titles and a brief annotation of each follows.

- Saturday Night At Fort Apache. Produced by WNBC-TV as part of its *New York Illustrated* series, this film is a documentary about the 41st Police Precinct in the South Bronx.

- The Ex-Con Outside. This film dramatically points out the problems facing ex-offenders when they try to earn their own way in the world.

- The Bill Of Rights In Action: Equal Opportunity. Despite the Constitution with its Bill of Rights and many new laws, no area has presented more complex problems than the achievement of equal opportunity for all our citizens. In this film, a case involving equal employment opportunities is argued in depth before an arbitrator, and the film is left open ended — the viewers are asked to decide the issue.

- The Bill Of Rights In Action: Freedom of Religion. The Bill of Rights guarantees us freedom of religion. But what happens if through the free exercise of religion, laws are broken or life is endangered? In this film, we hear lawyers arguing the constitutional issues involved in a transfusion case.

- The Bill Of Rights In Action: Freedom of Speech. The Bill of Rights guarantees us freedom of speech. But are there limits to this freedom? This film follows the case of an unpopular speaker who is convicted disturbing the peace.

- The Bill Of Rights In Action: Story Of A Trial. Two young men are accused of a misdemeanor offense. Following them from their arrest through their trial, the film stresses the importance of due process of law.

- The Bill Of Rights In Action: The Privilege Against Self-Incrimination. Perhaps no Constitutional amendment has aroused more controversy than the Fifth. The Fifth Amendment's privilege against self-incrimination protects the accused against coerced confessions. But on occasion it can also serve as a shield behind which a guilty person can hide. This film explores the importance and the abuse of the Fifth Amendment.

- Changing The Law. A new city ordinance in a California coastal community sets limits on the number of hours that a group of young surfers can use the beach. Reacting angrily to this restriction, the youths riot in the streets. Provocative and entertaining, this documentary-style film shows the advantage of changing laws by peaceful rather than violent means.